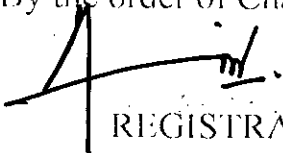


# FORM OF ORDER SHEET

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

**Appeal No. 2509/2023**

S No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/12/2023	<p>The appeal of Malik Muhammad Kamran received today by registered post through Mr. Ghulam Asghar Balooch Advocate. It is fixed for preliminary hearing before touring Single Bench at D.I.Khan on _____</p> <p>By the order of Chaitman  REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL PESHAWAR**

In service Appeal No. 2509 /2023

Malik M Kamran  
**(Appellant)**

**VERSUS**

GOVT of KPK etc  
**(Respondents)**

**I N D E X**

S.No.	Description of documents	Annexure	Page
1.	Memorandum of Appeal along with affidavit	--	
2.	Copies of the impugned order OB No. 1444 dated 13/08/2012 and order dated 07/08/2012	A	8
3.	Copy of FIR	B	9-11.
4.	Copies of judgment dated 04/04/2018 of High Court	C	12-28
5.	Copy of the departmental appeal and postal receipt and order dated 31/08/2023	D	29-32
6.	Vakalatnama	--	33

Dated: 1 /12/2023

Yours humble appellant

*M. M. Kamran*  
Malik Muhammad Kamran

**Ghulam Asghar Baloch**  
Nar-Malang  
Advocate High Court

*Asghar H/C*

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR**

Service Appeal No. 2509 /2023

**Malik Muhammad Kamran** son of Malik Sultan caste Patti  
Ban r/o Bakhtawar Abad Dera Ismail Khan. Ex-  
Constable#1906 District Police Dera Ismail Khan.

**(Appellant)**

**VERSUS**

1. Provincial Police Officer/I.G.P, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer/DIG Police, Region Dera Ismail Khan.
3. District Police Officer, Dera Ismail Khan.

**(RESPONDENTS)**

**APPEAL UNDER SECTION 4 OF THE KPK SERVICES  
TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER  
OB No. 1444 DATED 13/08/2012 ISSUED BY  
RESPONDENT NO. 3, V/HEREBY THE APPELLANT WAS  
AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM  
REGULAR SERVICE AND ALSO AGAINST THE  
INDECISION OF DEPARTMENTAL APPEAL OF  
APPELLANT VIDE WHICH THE RESPONDENT#1  
(APPELLATE AUTHORITY) EVEN DID NOT BOTHER TO  
DECIDE THE APPEAL OF APPELLANT.**

**PRAYER**

On acceptance of the instant appeal impugned orders bearing office order OB No 1444 dated 13/08/2012 issued by respondent No. 3 may kindly be set aside and the respondents be directed to reinstate the appellant in service as Constable with all back benefits.

**Note:** Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of responders.

Handwritten signature and notes in Urdu, including the name "Adar Hic" and other illegible text.

(2)

**Respectfully Sheweth;**

The appellant humbly submits as under;

1. That the appellant is adult, sane citizen of Pakistan, residing in District Dera Ismail Khan and rightly eligible for grant of relief south hereby.
2. That the appellant was appointed as Constable in Police Department Dera Ismail Khan and has been performed his duties with zeal and zest and to the entire satisfaction of his superiors.
3. That the brother of appellant got murdered on 23/07/2013 while incident shattered the entire family of the appellant and left the appellant bewildered, disoriented and obvious of pursuing his routine hence, was marked absence.
4. That the respondents appointed ASP Headquarters D.I.Khan as Inquiry officer who after completion of codal formalities, submitted his finding report and recommended to impose major penalty upon appellant on the charge of absent from duty. Copies of the impugned order OB No. 1444 dated 13/08/2012 and order dated 07/08/2012 passed by the respondents/authorities is annexed as **Annexure-A**.
5. That it is far-fetched to mention here that to the dismay of appellant, he was charged in a false criminal case by one Muhammad Amin and he was lodged in jail. During confinement of the appellant in prison, he was shown to have been proceeded against departmentally and through order bearing OB No. 1444 dated 13/08/2012 and order dated 07/08/2012 passed by respondents authority was awarded punishment of Removal from Service, albeit in sheer derogation of the law, rules and norms of natural justice. Copy of FIR No. 309 is annexed as **Annexure-B**.
6. That during inquiry proceedings conducted by Inquiry Officer, no opportunity was afforded to the appellant to defend his case in departmental proceedings. The authority also did not take into consideration the surrounding facts and chose to

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فلام اسٹور ڈائری  
H/C

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decide the matter ex-parte entailing in award of the above major penalty of removal from service.

7. That it was on 04/04/2018, the appellant was acquitted in criminal appeal No 73-D/2015 by way of judgment rendered by the Honourable Peshawar High Court Bench Dera Ismail Khan and was upheld by the august Supreme Court of Pakistan vide judgment dated 29/06/2018. Copies of judgment dated 04/04/2018 of High Court are annexed as **Annexure-C**.

That, after acquittal, feeling aggrieved by the impugned order OB No. 1444, the appellant preferred a department appeal on 31/08/2023 to the respondent#1 being appellate authority, but the same was not decided by the respondents as yet. Copy of the departmental appeal and postal receipt and order dated 31/08/2023 are annexed as **Annexure-D**.

That the impugned order# OB No. 1444 dated 07/08/2012 and subsequently indecision of the departmental appeal by the appellate authority are based on mala fide and against the law, thus, the appellant left with no other remedy, the appellant approaches this honourable tribunal seeking reinstatement in service with all back benefits in consequence of setting aside impugned orders on gracious acceptance of the instant petition on grounds hereinafter preferred.

### **G R O U N D S:**

- a. That the impugned order# OB No. 1444 dated 07/08/2012 and subsequently indecision of the departmental appeal by the appellate authority are arbitrary, discriminatory, legally and factually incorrect, ultra virus, void ab initio and militate against principle of natural justice, thus, are liable to be set aside and malafide.
- b. That the appellant is innocent and has been subjected to the penalty for no fault on his part because the appellant is acquitted from the charges levelled against him, hence,

(4)

the impugned orders are liable to be set aside after acquittal of the appellant. Hence, on this sole ground the impugned orders are liable to be set aside and the service appellant is entitled to be reinstated with all back benefits.

- c. That it is a matter of record that appellant has been vexed in clear defiance of law and principle laid by the superior courts as well as the tribunals as could be gathered from the facts and circumstances of the case.
- d. That the respondents/department awarded major penalty i.e. removal from service before the guilt of appellant by the learned trial court. Even then the punishment awarded to the appellant is too harsh.
- e. That the respondent#1 was bound to decide the departmental appeal of the appellant but the same is not decided as yet, hence, the appellant does not have any remedy except to invoke the jurisdiction of this honourable tribunal.

That the appellant seeks indulgence of this Honourable Tribunal to interfere in the matter as to whether the department/authorities can proceed against the appellant without giving him a right of audience, which too, ordained and envisaged in the Khyber Pakhtunkhwa Police Rules, 1975.

- g. That the appellant had sufficient length of service rendered for the department while adjudicating the matter of departmental authority utterly ignored not only the provisions of law on the point but the rights, too, of the appellant including fringe benefits and by imposing the harshest of the penalties in defines of law as aforesaid, deprived the family of appellant of its only means of earning livelihood.
- h. That the respondents while adjudicating in the matter of departmental proceedings of the entire matter in a slip shot manner through the orders impugned hereby, thus, the award of impugned punishment is patently

AD-116  
علامہ اصفیاء بی بی  
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unwarranted, illegal, ultra virus, nullity in law and apparently motivated for extraneous reasons and is not maintainable in law.

- i. That the petition of appeal is duly supported by law and rules formulated there under, besides the affirmation/affidavit annexed hereto.
- j. That this honourable Tribunal is competent and has ample powers to adjudge the matter under reference/appeal.
- k. That counsel for the appellant may graciously be allowed to raise additional grounds at the time of arguments.

In wake of submission made above the impugned orders bearing office order OB No 1444 dated 13/08/2012 issued by respondent No. 3 may kindly be set aside and the respondents be directed to reinstate the appellant in service as Constable with all back benefits.

Any other relief deemed appropriate in circumstances of the case may also be allowed in favour of appellant in the large interest of justice.

Dated: 01/12/2023

Yours humble appellant

*M. M. Kamran*  
Malik Muhammad Kamran

*Ghulam Asghar Baloch*  
Ghulam Asghar Baloch  
Nar-Malang  
Advocate High Court

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AEC/HIC

5

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

In service Appeal No. \_\_\_\_\_/2023

Malik M Kamran  
**(Appellant)**

**VERSUS**

GOVT of KPK etc  
**(Respondents)**

**CERTIFICATE**

Certified that appellant have not filed an appeal regarding the subject controversy, earlier in this august Tribunal.

Dated \_\_\_/12/2023

M.M. Kamran  
Appellant

**NOTE**

Appeal with enclosure along-with required sets thereof are being presented in separate file covers.

Dated 01/12/2023

Appellant's counsel

*[Handwritten signature and stamp]*  
Adul Haq





**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

In service Appeal No. \_\_\_\_\_/2023

Malik M Kamran  
**(Appellant)**

**VERSUS**

GOVT of KPK etc  
**(Respondents)**

**AFFIDAVIT**

I, **Malik Muhammad Kamran**, appellant herein, do hereby solemnly affirm on oath:-

1. That the accompanying appeal has been drafted by counsel following our instructions;
2. That all para-wise contents of the appeal are true and correct to the best of my knowledge, belief and information;
3. That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein, based on exaggeration or distortion of facts.

Dated \_\_\_/12/2023

Deponent

CNIC# 12101-3353050-7 *Malik M Kamran*

Identified By:-

**Ghulam Asghar Baloch**  
**Nar-Malang**  
Advocate High Court

*Handwritten signature and stamp of Ghulam Asghar Baloch, Advocate High Court.*

1906

A  
⑧

③

**ORDER**

This order is aimed to dispose off the department proceeding against Constable Mohammad Kamran No.1906 on the charges that he while posted at Police Lines District Bannu absented himself from lawful duty w.e from 19.01.2012 to till date without any leave/permission from higher authorities.

The defaulter Constable was served with charge sheet/statement of allegations. An enquiry was conducted into the matter through Mr. Sadiq Hussain Baloch, ASP/HQrs: DIKhan. The Enquiry Officer in his finding the defaulter Constable found guilty of the charges levelled against him. His reply of Charge Sheet/Final Show Cause Notice was received and place on record.

In the light of above, I, SCHAIL KHALID, District Police Officer DIKhan in exercise of powers conferred upon rule 19 KPK Police Rules 1975, awarded against defaulter Constable Mohammad Kamran No.1906 major punishment Dismissal from Service from the date of absences i.e 19.01.2012 with immediate effect.

**ORDER ANNOUNCED**

Dated 07.08.2012

District Police Officer,  
Dera Ismail Khan

AB 14/4/12 ✓  
DI 13.8.12

Attested  
[Signature]  
D.S.P / Legal  
D. I. Khan  
15/5/12

591  
Application received on 28.05.2018.  
Copy of the same is  
forwarded to the  
concerned authorities  
for their consideration.  
EXFC Mohammad  
Kamran No. 1906  
11.05.2018  
15.05.2018  
For Approval

15/5/18



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(16)

## ابتدائی اطلاعی رپورٹ

نسیع DIK

تاریخ وقت وقوعہ 17/06/12 وقت عمل قریب 12:45 بجے۔

تاریخ وقت رپورٹ 17/06/12 وقت 13:35 بجے چاکینڈی 17/06/12 وقت 14:10 بجے۔

محمد امین ولد صوبہ خان قوم بلوچ سکنہ جھوک مسوہر 49/50 سال۔

PPC 302-324/148-149

ارضی اراضی مدنی واقع ڈیرگی کالونی جانب شمال غرب بقا صلہ 1/2-1 کلومیٹر ارضان تقریباً

برسیدگی مراسلہ مقدمہ بمزولہ پیش رپورٹ چاک ہوا۔

بمزولہ پیش رپورٹ۔

### ابتدائی اطلاع نیچے درج کرو

وقت صدر تحریری مراسلہ منجانب رحمت اللہ خان ASI/IRC سول ہسپتال ڈیرہ بغرض قائمی مقدمہ بدست کنسٹیبل  
شہادت علی 353 موصول ہو کر ذیل ہے۔ رپورٹ محمد امین ولد صوبہ خان قوم بلوچ سکنہ جھوک مسوہر 49/50 سال  
سورہ 17/06/12 وقت 13:35 بجے ہمراہ مجروح بے ہوش برادر خود مہربان ہمر 45/46 سال و ہمراہ نعش  
عنایت اللہ ولد محمد بخش قوم بلوچ سکنہ بستی کھایا نوالی نمبر 2 ہمر 49/50 سال ایمر جنسی روم سول ہسپتال ڈیرہ میں  
رپورٹ کرتا ہے کہ میں معہ برادر ام مہربان، دوست ام عنایت اللہ بالانے ڈیرگی کالونی میں اراضی ٹھیکہ پر لی ہوئی  
میں ام مہربان معہ برادر ام و دوست ام بالاپنی اراضی کو سیراب کرنے کی خاطر اراضی میں پانی چھوڑ کر اراضی میں  
پانی بھری گئے تھے نتیجہ ہونے سے کہ عمل قریب قریب 12:45 بجے دوپہر سمیان حامر سلطان ولد محمد سلطان قوم پٹی  
میں ٹھیکہ جا بھٹا اور اس کے دو بھائی فرحان، کامران، چنگی پر جبکہ 12 اشخاص اسمائے مسکن نامعلوم موٹر سائیکل  
پر گئے اور ہماری اراضی سے پانی بند کر کے اپنی اراضی میں پانی چھوڑ دیا برادر ام مہربان و دوست عنایت اللہ اٹھ کر ان  
کے پاس گئے اور انہیں کہا ہماری اراضی سے پانی بند مت کرو کیونکہ آج ہمارا نمبر ہے۔ سمیان بالانے برادر ام مہربان و  
عنایت اللہ کو گالی گلوچ دیتے ہوئے اپنے اپنے بسول نکال کر مہربان و عنایت اللہ پر بہ نیت قتل فائرنگ شروع کر دی  
میں لگی فائرنگ سے دونوں لگ کر زخمی ہوئے اور گر پڑے اور طر زمان بالا چنگی و موٹر سائیکل پر بیٹھ کر چلے گئے میں نے جا  
ر دونوں کو سنبھالا اور میں معہ رشتہ دار ام صدر سلیم ولد غلام قاسم قوم بلوچ سکنہ کورائی جو کہ سواری موٹر کار ہماری روٹی  
لا تھا اسی موٹر کار میں دونوں زخمیوں کو ہسپتال لارہے تھے کہ راستہ میں عنایت اللہ بالانے زخموں کی تاب نہ لاتے ہوئے  
ہاں کچھ ہو گیا تو وہ کو میرے علاوہ صدر سلیم بالانے پاس و جو دو دیگر لوگوں نے پشم خود دیکھا ہے۔ سابقہ

P.T.O

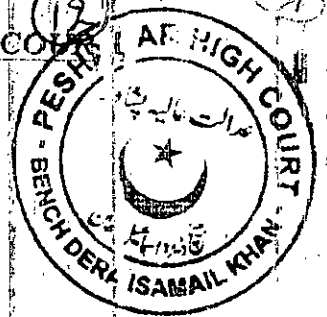
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میں یہ نیت قتل فائرنگ کرانے برادر مہربان کی  
 مجروریت و دوست ام عنایت اللہ کی ہلاکت کا برخلاف متذکرہ بالا کسان و عویدار ہوں۔ العبد نشان انکو تھا۔ کاروائی  
 پولیس حسب گفتہ سائل رپورٹ حرف بحرف درج بالا ہوئی بہ زبان اس پڑھ کر سنائی و سمجھائی گئی جس نے سمجھتے ہوئے  
 کو درست تسلیم کر کے زیر رپورٹ خود اپنا انکوٹھ ثبت کیا جس کی میں تصدیق کرتا ہوں۔ مقتول عنایت اللہ کے کاغذات  
 مرگ و مجروح مہربان کا نقشہ ضرر مرتب کر کے زیر حفاظت کنسٹیبل محمد آصف 206 حوالے ڈاکٹر صاحب کی مضمون  
 رپورٹ سے صورت جرائم PPC 302/324/148/149 کی پائی جاتی ہے۔ رپورٹ بلحاظ حالات تھانہ سند  
 بدست کنسٹیبل شوکت علی 353 ارسال ہے۔ دستخط انگریزی رحمت اللہ خان DIK ASI/IRC 7/06/12  
 کاروائی تھانہ پس آمدہ مراسلہ حرف بحرف درج بالا ہو کر پرچہ جرائم بالا چاک کیا جا کر نقل پرچہ بغرض تفتیش حوالہ نمبر  
 کیمن سٹاف کی جاتی ہے۔ وقوعہ بذراک ان اطلاع بذریعہ موامعاتی نظام انفران بالا کو دی جا رہی۔ پرچہ نمبر ۱۱  
 رپورٹ گزارش ہے۔

(18)

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT  
BENCH DERA ISMAIL KHAN.**

Cr. Appeal No. 72-D /2015



1. Malik Aamir Sultan
2. Malik Muhammad Kamran
3. Malik Muhammad Farhan.....Sons of Malik Sultan Caste  
Patti Ban R/o Bakhtawar Abad, District Dera Ismail Khan.  
.....(Accused / Appellants)

VERSUS

1. The State.
2. Muhammad Amin S/o Soba Khan Caste Baloch R/o Jhook  
Masso District Dera Ismail Khan.

.....(Complainant)

Filed today 3178

Add: Registrar.  
22/10/15

*W. M. Khan*

**APPEAL UNDER SECTION 410 Cr.P.C AGAINST THE ORDER DATED 13/10/2015 PASSED BY LEARNED ADDITIONAL SESSIONS JUDGE-II, DERA ISMAIL KHAN VIDE WHICH SHE CONVICTED AND SENTENCED THE ACCUSED / APPELLANT TO LIFE IMPRISONMENT ON TWO COUNTS UNDER SECTION 302(B)/34 P.P.C AND FINE OF RS. 200000/- (TWO LACS) AGAINST EACH OF THEM UNDER SECTION 544-A Cr.P.C FOR THE PURPOSE OF GIVING TO THE LEGAL HEIRS OF DECEASED INAYAT ULLAH AND MEHARBAN AND IN DEFAULT OF PAYMENT SHALL UNDERGO FOR IMPRISONMENT OF SIX MONTHS. SENTENCES TO RUN CONCURRENTLY AND ACCUSED / APPELLANT ARE EXTENDED THE BENEFIT OF SECTION 382(B) Cr.P.C.**

**PRAYER TO ACQUIT THE ACCUSED / APPELLANTS HONOURABLY.**

Respectfully Sheweth:-

1. That the impugned judgment is against facts, law and justice. The accused / appellants are totally  
Cr.A.73-D of 2015 (Malik Aamir Sultan Vs. State) (Grounds)

**ATTESTED**  
*[Signature]*  
**EXAMINOR**  
Peshawar High Court  
D.I. Khan Bench

(13)

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innocent and falsely implicated. The certified copy of the order is enclosed as Annexure "A".

2. That on 17/06/2012 at about 13.35 Hrs Mohanimad Amin complainant / respondent No. 2 made a report to Police in emergency room of the Civil Hospital Dera Ismail Khan, converted into a FIR No. 309 dated 17/06/2012 at Police Station Saddar Dera Ismail Khan through a MURASLA sent by Rehmat Ullah Khan ASI. Breif facts narrated therein are that complainant with his brother deceased Mehrban and his friend deceased Inayat Ullah had gone to irrigate their lands in Diary Colony where they allegedly released water from water channel to their lands and themselves sat for rest under a CHAPPER from where they saw accused / appellants reaching their lands in QINGCHI with two unknown persons on Motorbikes and straight way went to the place from where the water was flowing to their lands and diverted the water to their lands on which deceased Inayat Ullah and deceased Meharban rushed to the spot and asked the accused not to divert the water and exchanged hot words but the accused opened fire at them resultantly both Meharban and Inayat Ullah fell on the ground injured. Deceased Ianayat Ullah died instantaneously while injured Meharban in an unconscious condition was shifted to Civil Hospital Dera Ismail Khan where he died after few hours. Copy of the FIR is enclosed as Annexure "B".

In which the accused / appellants are falsely charged along with two unknown accused.

3. That the complainant party are closely related to serving police officers in Dera Ismail Khan and

Filed today 3/7/8  
 Addl: Registrar.  
 22/10/15.

*Handwritten signature*

ATTESTED  
 2-07-18  
 EXAMINOR  
 Jeshwar Singh  
 D. Ismail Khan

(3) (14) (3) (4)

thereby prevailed upon the investigating officer in this case, who acted arbitrarily and maliciously to involve the accused / appellants falsely. Similarly the report of Aamir Sultan in an injured condition was made on the same day even earlier to the present report in the Civil Hospital. It was registered vide FIR No. 210 and was dropped arbitrarily. The complaint of accused / appellant Aamir Sultan, the I.G.P, Khyber Pakhtunkhwa constituted a high level board under article 18(B) Police order 2002. The report of said board clearly establishes the arbitrariness and misconduct of the Police. Copy of report is enclosed as Annexure "C".

Filed today 3178

Addl: Registrar.

22/10/15

*W. arbab*

4. That the entire evidence produced by the prosecution is highly unreliable, tutored by the Police and the result of plantation.
5. That the presence of alleged eye witnesses at the spot is totally un-established and uncorroborated.
6. That the version of providing meals to the two deceased and complainant by PW Safdar Salim is substantially un-natural and unproved. Even the PWs have contradicted themselves regarding the nature of food provided by Safdar Salim PW.
7. That there is no evidence establishing the lease of the land in Dairy Colony in the name of the complainant or his deceased brother. Similarly no proof is available regarding the ownership of any motorcar in the name of P.W. Safdar Salim.
8. That the alleged recovery of empties in this case is fake and unattested by any independent evidence. The result of fire arms expert in this respect is also fake, and inadmissible as the empties were allegedly sent to the expert after

CA 73-D of 2015 (Maik Aamir Sultan Vs State) (Ground)

MAJESTIC

EXAMINOR

Custodian High Court  
D.I. Khan Bench



(15) (4) (10)

long nine days. Moreover, the report of the Arms expert shows the occurrence as the doing of one person.

9. That no specific role has been attributed to any accused / appellants, the benefit which shall be extended to all the accused.
10. That the medical evidence is very much contradictory and against the prosecution. Deceased Meharban's P.M is shown to have been conducted at 05:20 P.M by Dr. Ghulam Muhammad S.M.O, D.H.Q Hospital Dera Ismail Khan whereas Dr. Malik Akhtar S.M.O examines said Meharban at 08:45 P.M in an injured condition. These statements can not be reconciled.
1. That the P.M report of deceased Inayat Ullah shows semi digested food in his instantines whereas he expired instantaneously after the firing just after taking meals.
2. That there is no proof of the ownership of any lands of the accused / appellants adjoining the lands of complainant and / or deceased. Hence there was no occasion for the accused to commit heinous offence of double murder.
3. That the evidence produced by the prosecution is full of doubts, the benefit of which should legally be extended to the accused / appellants.
4. That legally the site plan is not proved to have been prepared by any eye witness. It is simply an embroidery work of the i.o. and is not believable on the face of it, showing accused and deceased very close inter-se jumbled up. The eye witnesses are allegedly shown at a distance of more than 200 paces.

Cr.A.73-D of 2015 (Malik Aamir Sultan.Vs.State) (Grounds)

ALISTED  
2015-05-18  
EXAMINOR  
Peshawar High Court  
D.I.Khan Bench

Filed today 3178

Addl Registrar  
22/10/15

- (16) (5) (10)
15. That the impugned judgment is not sustainable legally and the accused / appellants deserve to be acquitted honourably.
  16. That the counsel for the accused / appellants may graciously be allowed to take any legal additional plea at the time of arguments.

*In wake of the above submissions, the appeal may kindly be allowed and the accused / appellants be acquitted honourably.*

Filed today.

3/28

Add: Registrar

22/10/15

Accused / Appellants

Malik Amir Sultan etc  
Through Counsel.

Dated: 20/10/2015



**SANA ULLAH KHAN GANDAPUR**  
Advocate Supreme Court of  
Pakistan,

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**EXAMINOR**  
Peshawar High Court  
D.I. Khan District

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**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH**  
(Judicial Department)

Criminal Appeal No.73-D/2015

Malik Aamir Sultan and two others

Versus

The State and another



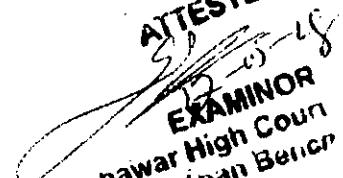
**JUDGMENT**

Date of hearing 04.4.2018

Appellants by: M/S Senaullah Khan Gandapur, Salimullah Khan Ranazai, Ahmad Ali Khan, Muhammad Ismail Alizai and Shah Shujaullah, Advocates.

Respondents by: Mr. Kamran Hayat Miankhel, Addl. A.G and Abdul Latif Khan Baloch, Advocate.

**ISHTIAQ IBRAHIM, J.-** Through this single judgment, we propose to dispose of instant Criminal Appeal No.73-D/2015 filed by appellants Malik Aamir Sultan and two others against their conviction and sentence and Criminal Revision No.16-D/2015 filed by complainant Muhammad Amin for enhancement of sentence awarded to the appellants, as both the matters arise out of one and the same judgment dated 13.10.2015 of learned Additional Sessions Judge-II, D.I.Khan, whereby they were convicted under sections 302(b)/34 PPC and sentenced to life imprisonment on two counts with fine of Rs.200000/- against each under section 544-A Cr.P.C and in default of payment of fine, to undergo imprisonment for six months. The sentences were

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ordered to run concurrently and benefit of section 382-B

Cr.P.C was extended to them.

2. The prosecution story as divulged from the FIR lodged by complainant Muhammad Amin is that on 17.6.2012 at 1335 hours, he in the company of his injured brother Mehrban who was unconscious and dead body of deceased Inayatullah reported the matter at Emergency Room of Civil Hospital, D.I.Khan to the effect that he and his brother Mehrban and friend Inayatullah had obtained landed property in dairy colony on lease; that on the said date, he alongwith his brother and friend, after irrigating the land, were taking rest beneath the 'chapri' when at about 1245 hours, Aamir Sultan and his two brothers boarded in Quingqi whereas two unknown persons on motorcycle came there and diverted the water to their land; that Mehrban and Inayatullah forbade them, upon which they (accused) hurled abuses and opened fire at them with their pistols. With the firing of accused, Mehrban and Inayatullah got hit and fell down and the accused decamped in Quingqi and motorcycle. The complainant and his relative Safdar Salim who had fetched lunch for them in his motorcar, shifted the injured to hospital but on the way to hospital, Inayatullah succumbed to the injuries. The complainant stated that

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there was no previous motive, but the occurrence was the result of dispute over water. On the said date, Mehrban injured also succumbed to the injuries in the hospital.

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3. After completion of usual investigation, complete challan against the appellants was put in Court. They were formally charged, to which they did not plead guilty and claimed trial. In order to prove its case against the appellants, the prosecution examined fifteen witnesses including complainant and Safdar Salim. After closure of prosecution evidence, the appellants were examined under section 342 Cr.P.C. They professed innocence and false implication. However, they neither appeared as their own witnesses on oath nor produced any evidence in their defence. On conclusion of the trial, the learned trial Court convicted and sentenced the appellants as mentioned above vide impugned judgment dated 13.10.2015.

4. The learned counsels representing the appellants vehemently contended that the complainant and alleged eyewitness Safdar Salim were not present at the spot at the time of alleged occurrence and were procured later on; that there are material contradictions in the statements of P.Ws which rendered their testimony unbelievable; that the medical evidence and the site plan

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are not in line with the ocular testimony; that neither the utensils which PW Safdar Salim had allegedly taken with lunch were taken into possession nor there was any blood in the motorcar wherein the injured were shifted to the hospital. Concluding their arguments, the learned counsels were of the view that the learned trial Court has not properly appreciated the evidence on record and has fallen into the field of error by convicting the appellants.

5. As against that, the learned Addl: A.G representing the State assisted by learned counsel for the complainant supported the impugned judgment and while refuting the arguments of learned counsels for the appellants prayed for enhancement of the sentence awarded to the appellants.

6. We have considered the submissions of learned counsel for the parties and carefully gone through the record.

7. The prosecution case mainly hinges on the ocular testimony furnished by complainant Muhammad Amin (PW-11) and Safdar Salim (PW-12), medical evidence, recovery of empties from the spot and the F.S.L report.

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8. The first and the foremost requirement for the proof of charge against particular set of accused is as to whether the prosecution has been able to establish the presence of witnesses at the spot when the occurrence took place. In the present case, the ocular account flows from the mouth of Muhammad Amin, brother of deceased Mehrban who appeared as PW-11 and Safdar Salim, relative/cousin of the complainant and deceased Mehrban who was examined as PW-12. The stance of these two witnesses is that they were irrigating their land and the accused diverted the water on which an altercation took place and thereafter firing was made, as a result of which the two deceased lost their lives. PW Muhammad Amin was the elder brother of deceased Mehrban whereas deceased Inayatullah was their friend. The site plan shows that both the P.Ws were also in the close proximity at the time of firing and they could have easily been targeted by the accused when the incident took place but their unhurt escape throws doubt on their presence at the spot at the relevant time. Even otherwise, PW Muhammad Amin was elder and when two persons were already murdered, how they were spared. The stance of Safdar Salim (PW-12) is that he had taken meals to the deceased and Muhammad Amin complainant. During cross examination, this PW

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admitted that he did not use to visit the Dairy Farm on daily basis and on the day of occurrence, he had visited the shop of Inayatullah on Sheikh Yousaf road opposite Qurtaba University in connection with his personal affair and since Inayatullah was not present there, this witness called him on phone who told that he was at Dairy Farm and if this witness wanted to visit him, he could go there on transport. The presence of this witness at the spot at the relevant time appears to be doubtful because no utensils of meals were either noticed by the Investigating Officer during spot inspection nor the same were taken into possession. It is also in the evidence that the deceased then injured were shifted to the hospital in the motorcar of PW Safdar Salim but strangely, neither the said motorcar was taken into possession on the same day nor any blood was noticed in the same. Thus, the testimony of this witness for this reason alone is disbelieved. The record transpires that even no instrument of husbandry belonging to the complainant party was taken into possession which was being possessed by them at the relevant time. The field irrigated by the complainant has also not been observed by the Investigating Officer at the time of preparation of site plan. From the above discussion, it is manifest that both the P.Ws were not present at the spot at the time of

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occurrence and were procured subsequently, therefore, their testimony is ruled out of consideration. In this respect, reliance can be placed on the case of Gul Faraz alias Paley Khan. Vs. The State (2015 SD 139) wherein it was held that:-

"Moreover, the deceased and eyewitnesses were on same footing before the accused being brother inter-se. Both the eyewitnesses being real brothers of the deceased have not shown any effort to rescue their brother. It is also the case of prosecution that when the deceased was hit with the firing of accused and fell on the ground, the deceased thrashed him with Butt of their Kalashnikovs, but none of the PWs has shown any effort to move towards their brother and rescue him from the clutches of the accused despite that they were having axes, which does not appeal to a prudent mind being against the natural human conduct as well as against the customs and usages of our society, particularly this part of the country where in such like situation a brother would not hesitate to sacrifice his life for the sake of life of his other brother. The conduct of eyewitnesses like silent spectators creates reasonable doubt about their presence with the deceased. Had they been present with the deceased, they must have made some efforts for rescue of their brother."

Similarly, in the case of Mst. Rukhsanu Begum and others. Vs. Sajjad and others (2017 SCMR 596) it was held that:-

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*"The site plan positions would show that, he and the other PWs were at the mercy of the assailants but being the prime target, even no threat was extended to him. Blessing him with unbelievable courtesy and mercy shown to him by the accused knowing well that he and the witnesses would depose against them by leaving them unhurt, is absolutely unbelievable story. Such behaviour, on the part of the accused runs counter to natural human conduct and behaviour explained in the provisions of Article 129 of the Qanun-e-Shahadat Order, 1984, therefore, the Court is unable to accept such unbelievable proposition."*

9. The case of the prosecution is that deceased Inayatullah was their friend. It is pertinent to mention here that complainant party belongs to village Jhok Massu while the address of deceased Inayatullah is Basti Ghayanwali. Both these places are distantly situated from each other. The occurrence took place in the month of June and almost noon time. How it is possible that a guest would be taken to such a place in the hot weather and that too in D.I.Khan. It appears that deceased Inayatullah was not only a guest/friend, but he was brought by the complainant party for the accomplishment of some job as this has been consistently suggested to both the alleged eyewitnesses that deceased Inayatullah was having criminal history and was involved in several cases. This fact is further fortified by postmortem report

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of deceased Inayatullah, wherein two firearm entry (25) (14) (20) wounds were observed on his person, while Mehrban deceased, who had direct motive with the accused, sustained solitary injury. Moreover, two firearm entry wounds were observed by the doctor on the dead body of deceased Inayatullah with corresponding exit wounds whereas one firearm entry wound with corresponding exit wound was observed on the dead body of deceased Mehrban. All the entry wounds are carrying the dimension of 1/4x1/4 inches while on the other hand, three real brothers, the appellants, and two unknown accused are charged for simultaneous firing at the deceased. The number of injuries does not commensurate with the number of accused party. More so, all the injuries bear one and the same dimension. It reflects that it is the job of one person but in order to throw the net wide, the number of accused has been exaggerated as three brothers and two unknown accused have been charged. The empties recovered were not sent in order to ascertain whether the same were fired from one or different weapons. What was the reason that this opinion was not sought by the Investigating Officer, the answer of that is not available on the record of the case and it can be presumed that the Investigating Officer was conscious of the fact that number of the accused has been

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exaggerated and if such report is sought, that would be detrimental to the case of the prosecution. Thus, there is element of concealment and exaggeration as well which further nullifies the mode and manner as set out by the prosecution. In this respect, guidance is sought from the case of Mukhtasir and 5 others. Vs. The State and another (2017 P.L.R 419) wherein it was held that:-

*"From the above assessment of evidence it is discernable that the charge made by the complainant party is exaggerated, as seven number of one family have been implicated on the strength of the motive which is more tempting than blood feud. Reliance is placed on the case titled "Muhammad Zaman. Vs. The State and others (2014 SCMR 749) wherein it is held that:-*

*"The number of assailants in the circumstances of the case appears to have been exaggerated. It seems that most of the persons including the respondents have been charged because of previous enmity. The tragedy may have been enacted by Mukhtar who has gone into hiding or Munawar who has been acquitted because the deceased Shabbir was alleged to have illicit relation with their sister, but many who have no visible nexus with this part of the story have also been roped in, it is so because it is customary in this part of the country to throw wide net of implication to rope in all those who could possibly pursue the case or do something to save the skin of the one who is innocent or who is actually responsible for the commission of the crime. The court, therefore, is required to exercise much greater care and*

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circumspection while appraising evidence."

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10. A cross report was referred by learned counsels for the appellants but in that case, unknown accused are charged and the place of occurrence also appears to be different from the one shown in the present case and the case was filed being untraced by the order of Illaqa Judicial Magistrate. The same cannot be used by either of the parties for the proof of guilt or innocence of the present appellants.

11. For what has been discussed above, we are of the view that the prosecution case is full of doubts, the benefit of which should have been given to the appellants. In the case of Muhammad Akram. Vs. The State (2009 SCMR 230) it was held that:-

*"It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace."*

12. Resultantly, we, accept Criminal Appeal No.73-D/2015, set aside the impugned judgment of conviction and sentence dated 13.10.2015 and acquit the appellants Malik Aamir Sultan, Malik Muhammad Kamran and Malik Muhammad Farhan of the charges levelled against

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them in this case. They be set free from Jail forthwith if not required in any other case.

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13. So far as Criminal Revision No. 16-D/2015, for enhancement of sentence of the appellants is concerned, since the appellants have been acquitted of the charges, therefore, the Criminal Revision has become infructuous and is dismissed accordingly.

14. Above are the detailed reasons for our short order of even date.

Announced.  
Dt: 04.4.2018.  
Habib

~~JUDGE~~  
JUDGE

(DB)  
Hon'ble Mr. Justice Ishaq Ibrahim  
Hon'ble Mr. Justice Shakeel Ahmad

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G.R.No. 1431  
Application Received on 12-05-18  
Copying Fee deposited Rs.           
No of Papers 17 page  
Copying Fee 60  
Urgent Fee           
Total Fee 60  
Copy ready for delivery 12-05-18  
Copy delivered on 12-05-18  
Signature of Examiner [Signature]

Certified to be true Copy  
12-05-18  
EXAMINOR  
Peshawar High Court Bench D I Khan  
Authorized Under Section 97 of  
Qanun-e-Shahadat Act

No. 313

For Insurance Notices see reverse.  
RGL117556413

Rs. 10/-

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the initial weight prescribed in the  
Post Office Guide or on which no  
acknowledgement is due.

Received a registered\*  
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Date Stamp

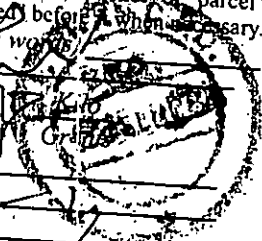
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\*Write here "letter", "postcard", "packet" or "parcel"  
with the word "insured" before when necessary.  
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If insured.

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of sender



No. 2

**حضور جناب والا شان انسپکٹر جنرل آف پولیس KPK بشاہ**

**ایڈیشنل ایپل برائے بحالی ملازمت از تاریخ و وقت برخواستگی ایکس کانٹینیل ملک محمد کامران نمبر 1906**

جناب عالی!

مورخہ 02/11/2021 کو ایپل برائے بحالی ملازمت حضور والا شان کو بھجوائی گئی تھی جو کہ بستہ خاموشی کی نظر ہو گئی اور باوجود ڈھونڈنے کے غائب ہو چکی ہے۔ لہذا اسی ضمن میں ایڈیشنل ایپل برائے بحالی ملازمت پیش خدمت ہے جس کے بارے ذیل گزارشات کی جا رہی ہیں۔

- 1- یہ کہ بحوالہ آڈر نمبر 1444 مورخہ 13/08/2012 مجھے ملکہ سے غیر حاضری کی وجہ سے Dismiss کر دیا گیا۔
- 2- میرے خلاف Departmental Proceeding کا عمل جناب صادق حسین بلوچ ASP ریڈ کوارٹر DIK نے کیا اور فائنل رپورٹ جناب SP صاحب سمیل خالد کو کر دی۔
- 3- جناب SP صاحب سمیل خالد نے بغیر مجھے طلب کئے اور بغیر چارج شیٹ و فائنل شو کاز نوٹس کہ مجھے میری گواہینا جڈ سروس سے مورخہ 07/08/2012 کو Dismiss کر ڈالا۔
- 4- جس کی میں نے باقاعدہ سروس ایپل جناب RPO صاحب DIK کو گزارش کی جو کہ وہاں میری بات نہ سنی گئی اور اس نے بھی مجھے بغیر سے Reject کر دیا گیا۔
- 5- درحقیقت اس Period کے دوران بحوالہ مقدمہ نمبر 309 مورخہ 17/06/2012 جرم 302, 324, 148, 149 تھانہ صدر میں ایک جھوٹی دعویداری کے باعث حوالات جوڈیشل سنٹر جیل DIK میں رکھا گیا تھا۔ FIR کا پی ہمراہ لف ہے۔
- 6- چونکہ میرے خلاف مقدمہ من گھڑت اور جھوٹا تھا اور میں نے اسے عدالتی سطح پر Contest کیا اور عدالت عالیہ ہائی کورٹ پشاور جج DIK نے مجھے بری فرمادیا۔
- 7- اس برینٹ کے بعد میں نے مقدمہ ہذا کے مدعی محمد امین ولد صوبہ خان قوم بلوچ سکنہ جھوک مسو سے رابطہ کیا اور اسے یہ احساس دلایا کہ ان کی جھوٹی دعویداری کے باعث اتنی بڑی تکلیف اٹھانے کے باوجود وہ ملازمت سے ہاتھ دھو بیٹھا ہے اور اس سلسلہ میں آخر یہ کیا وجہ ہے کہ انہوں نے مجھے بموجودگی معتبرین علاقہ اپنے کیے پر نام ہونے کا اقرار کیا اور ساتھ ہی اپنے چارج جو کہ اس نے لگایا تھا سے ہاتھ دھو بیٹھا۔ بیان حلفی کی فوٹو سنیت کا پی ہمراہ لف ہے جس میں میرے خلاف Cause of Dismissal/Absency اپنی موت آپ مر چکی اور اس وجہ سے ضرورت برائے بحالی ملازمت از تاریخ و وقت لاحق ہو چکی ہے جو کہ از روئے شریعت و قانون میرا حق ہے۔

**لہذا مجھے از تاریخ و وقت برخواستگی سے بعد جملہ مراعات اپنی سروس پر بحال فرمایا جائے۔ فقط مورخہ 31/08/2023**

ملکہ محمد کامران ایکس کانٹینیل ولد ملک محمد سلطان قوم پٹی بن سکنہ بختاور آباد داخلی تھو یا سیال ڈیرہ اسماعیل خان

موبائل نمبر: 0333-1408324

M. M. Khan



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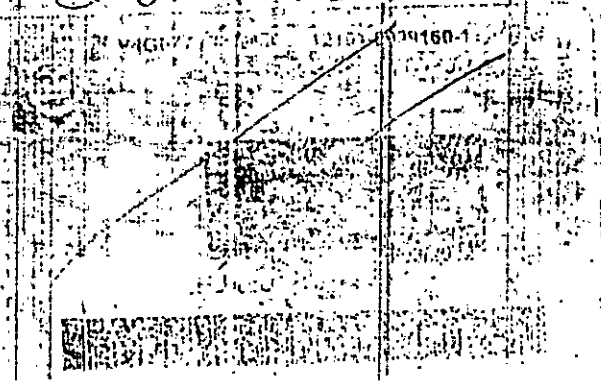


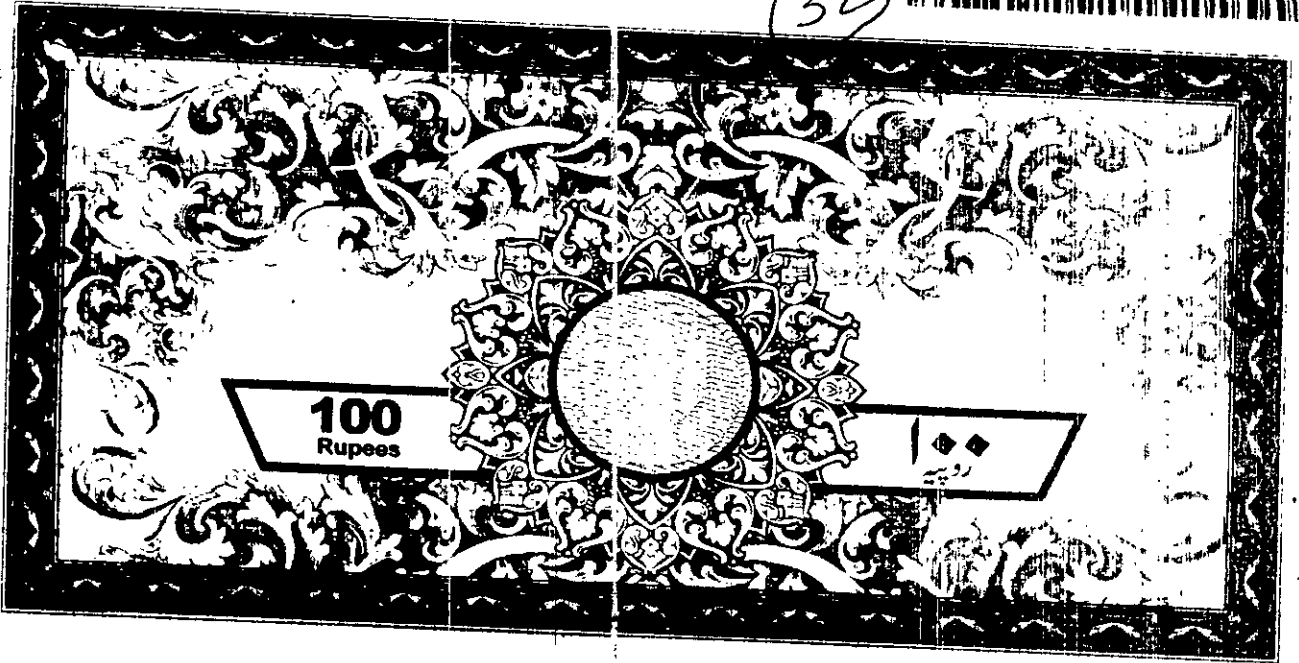
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*W. J. C. S.*





بیان علی  
 جوالہ نمبر 309 مورخ 06/17/12  
 302/324  
 148-149  
 کتابہ عدد 218

بہار علی کے بیان میں جوالہ نمبر 309 مورخ 06/17/12  
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MULAM ASGHAR

Advocate  
bc-18-6441

Date of Issue: February 2020  
Valid upto: February 2023



KP Bar Council

# وکالت نامہ

بعدالت

صاحب KPK سروسز کمپنیز

سبز اسلام آباد

مخانب

حکومت KPK

بنام

حرم کاروان

سروسز

دعویٰ یا جرم

تفصیل دعویٰ یا جرم

## باعث تحریر آنکہ

کلیے DM

مقدمہ مندرجہ بالا عنوان میں اپنی طرف پیروی و جواب دہی برائے پیشی یا تصفیہ مقدمہ بنام

## غلام اصغر ایڈووکیٹ ہائی کورٹ DM

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ہذا بذریعہ روبرو عدالت حاضر ہوتا ہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر مظہر حاضر نہ اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر پکھری کے علاوہ اور جگہ ساعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا محنت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کبھی ساختہ پر داختہ صاحب موصوف مثل کردہ ذات منظور و قبول ہو گا اور صاحب موصوف کو عرض دعویٰ یا جرم یا دعویٰ یا درخواست اجراء اسائے ڈگری نظر ثانی اپیل نگرانی دہر قسم درخواست ہر قسم کے بیان دینے اور پرٹالی یا رضی نامہ و فیصلہ بر خلاف کرنے اقبال دعویٰ کا بھی اختیار ہو گا اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکور کو بیرون از پکھری صدر پیروی مقدمہ مذکور نظر ثانی اپیل نگرانی و برآمدگی مقدمہ یا منسوخی ڈگری یک طرفہ یا درخواست حکم اقتناعی یا قرتی یا گرفتاری قبل از فیصلہ اجراء ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ مختار پیروی کا اختیار ہو گا اور تمام ساختہ پر داختہ صاحب موصوف مثل کردہ از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مذکورہ یا اس کے جزوی کاروائی یا بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مذکورہ یا اس کے کسی جزوی کاروائی یا بصورت درخواست نظر ثانی اپیل نگرانی یا دیگر معاملہ و قدمہ مذکورہ کسی دوسرے وکیل یا ایئر سٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور مشیر قانون کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التوا ہونے گا وہ صاحب موصوف کا حق ہو گا مگر صاحب موصوف کا پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہو گا۔

لہذا وکالت نامہ نگہ دیا ہے تاکہ سند رہے۔

2023

مورخہ

مضمون کا وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور پڑھ لیا ہے

Accepted

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