


FORM OF ORDER SHEET

Court of _____

Appeal No. 203/2024

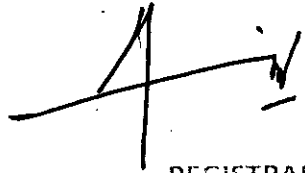
| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 29/01/2024 | <p>The appeal of Mr. Shabir Khan resubmitted today by Mr. Kilayat Ullah Shahabkhel Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on Pareha Peshi is given to counsel for the appellant.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p> |

The appeal of Mr. Shabir Khan received today i.e on 19.01.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- ✓ Index of the appeal be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- ✓ Appeal has not been flagged/marked with annexures marks.
- 3- ✓ Annexures of the appeal are unattested.
- 4- ④ Memorandum of appeal is not signed by the appellant.
- 5- ✓ Check list is not attached with the appeal.
- 6- ⑥ Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 7- Annexures of the appeal are not in sequence be annexed serial wise as mentioned in the memo appeal.
- 8- ⑧ Copies of appointment order and Service Card mentioned in the memo of appeal are not attached with the appeal.
- 9- ⑨ One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 157 /S.T,

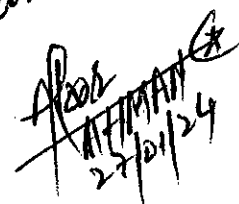
Dt. 24/1 /2024.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Kifayat Ullah Shahbakhel Adv.
High Court at Peshawar.

Objection resolved by
Adv. Noor Rahman Wazir
Junior of the counsel
for appellant,
Date: 27/01/24


27/01/24

BEFORE THE HON'BLE FEDERAL SERVICE
TRIBUNAL, ISLAMABAD

In SA No. 203 / 2024

Shabir Khan, Constable KP Police, Belt No. 4091

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
and others

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Dated: 25/01/2024

APPELLANT

Through

Kifayat Ullah Shahabkhel
Advocate, High Court
Peshawar
&
Noor Rahman Wazir
Advocate, Peshawar.

(1)

**BEFORE THE HONBLE FEDERAL SERVICE
TRIBUNAL, ISLAMABAD**

In SA No. 203 / 2023

Shabir Khan, Constable KP Police, Belt No. 4091, S/o Gul Bahadar R/o Shaikh Muhammadi, Tehsil & District Peshawar, was posted at P.S University Complex Peshawar.
.....Appellant

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. CCPO, Khyber Pakhtunkhwa, Peshawar.
3. District Police Officer, Peshawar.
4. Superintendent of Police, Headquarter, Peshawar.

.....Respondents

A. APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1973 AGAINST THE ORDER DATED 08/02/2021 PASSED BY THE RESPONDENT NO. 4 AND RESPONDENT NO. 2 DATED 19/09/2023, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE.

PRAYER:

PRAYER:

On acceptance of instant of Service Appeal, the impugned orders dated 08/02/2021 & 19/09/2023 may kindly be set aside and the appellant may kindly be re-instated into his service with all back benefits.

Any other relief not specifically asked for may also been graciously be extended in favor of appellant.

Respectfully Sheweth.

The Appellant humbly submits as under:-

1. That the appellant is peaceful and law abiding citizen of Pakistan.
2. That the appellant performed his duties with keen heart with full devotion and also participated in different operations during his service.
3. That each and every task given to the Appellant was achieved with due honesty and uprightness.
4. That in the year of 2019, a false criminal case was planted against the Appellant vide case FIR No.

2721, dated 28/12/2019, under section 17(4) Haraba, Police Station Chamkani.

6. That the Appellant after the registration of the false case, remain in custody for a period of 09 months due to which the Appellant remains absent from duties.
7. That due to absence of the Appellant from the duty, final show cause notice was issued 20/01/2021, however the same was not received and not relied as the absent was behind the bar and no proper opportunity has not been given to the Appellant to show his legal standing before Respondent No. 3, in fact one sided proceeding was brought up against the appellant, which is not the mandate of law.
8. That the Respondent No. 4 issued final show cause notice dated 20/01/2021 against the appellant in his absence. *(Copy of Show Cause Notice is attached).*
9. That thereafter respondent No. 4 charge sheeted the appellant regarding the allegations and subsequently the respondent No. 4 dismissed the appellant from the service. *(Copy of Charge Sheet & Dismissal Order are attached).*

- 4
10. That feeling aggrieved from the order of Respondent No. 2, the appellant approached the Respondent No.1 / Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, whereby the respondent No. 1 still not passed any order, hence the instant appeal lies.

GROUNDS:

- A. That the appellant has not been treated in accordance with law and hence his rights secure and guaranteed under constitution of 1973 were badly violated.
- B. That there is no evidence available against the appellant with respondents department regarding allegations levelled against the appellant.
- C. That no opportunity was given to the appellant of personal hearing which violates fundamental rights of the appellant.
- D. That the appellant belongs the poor family and sole bread earner of the entire family having minor kids, wife and old parents.
- E. That the appellant served in respondent department for almost 11 years and very near to the retirement but very harsh and major penalty

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has been given to the appellant without violation of any rules and regulations of the department.

- F. That the appellant did not absent / deserter from his duty and not involve in gross misconduct and not violated departmental rules.
- G. That the appellant has been honorably acquitted from the charge leveled against him by the Learned Additional District & Session Judge dated 26/01/2023, rightly on merits. *(Copy of the Judgment dated 26/01/2023 is annexed).*
- H. That any other grounds not raised in instant service appeal may graciously be allowed to be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.

It is, therefore, most humbly prayed that on acceptance of this Service Appeal, impugned order 08/02/2021 & 19/03/2023 may kindly be set aside and the appellant may kindly be reinstated into service with all back benefits.

Any other relief, which this Hon'ble Tribunal deems fit may also be granted to the Appellant.

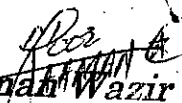
Dated: 18/01/2024

APPELLANT

Through

(6)



Kifayat Ullah Shahabkhel
Advocate, High Court
Peshawar
&

Noor Rahmat Wazir
Advocate, Peshawar.

VERIFICATION:-

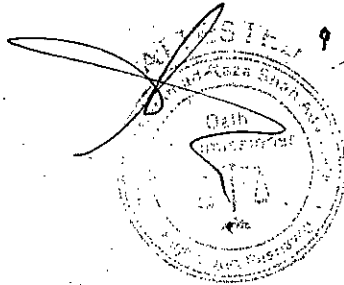
It is verified that the contents of this plaint are true and correct to the best of my knowledge and belief and nothing has been intentionally concealed from this Hon'ble Court.

Verifier

NOTE:-

As per information supplied to me by my client no suit regarding the instant matter has earlier been filed or pending in any court of law between the parties.


Advocate



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**BEFORE THE HON'BLE FEDERAL SERVICE
TRIBUNAL, ISLAMABAD**

In SA No. _____ / 2024

Shabir Khan, Constable KP Police, Belt No. 4091

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
and others

AFFIDAVIT

I, *Shabir Khan, Constable KP Police, Belt No. 4091, S/o Gul Bahadar R/o Shaikh Muhammadi, Tehsil & District Peshawar,* do hereby solemnly affirm and declare on Oath that all the contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or mis-stated.

DEPONENT: _____



True in Peshawar, 27 Nov 2024
Shabir Khan

3

BEFORE THE HON'BLE FEDERAL SERVICE
TRIBUNAL, ISLAMABAD

In SA No. _____ / 2023

Shabir Khan, Constable KP Police, Belt No. 4091

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar and others

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

- 1) That the instant appeal has been filed today before this Hon'ble Court.
- 2) That the appellant was charged in Case FIR No: 2721, dated 28/12/2019, Under Section 17(4) Haraba, Police Station Chamkani and the appellant was firstly behind the bar and then after the grant of bail, the appellant suffered mental agony and serious depressive disorders. It is pertinent to mentioned here that due to the above mentioned situation, the appellant unfortunately cannot approach this Hon'ble Court with in time.
- 3) That as per the phenomenon of natural justice as well as various judgments of the Superior Court, the case should be decided on merits rather than the technicalities of law.

- 4) That the appellant have genuine cause for condoned the delay.
- 5) That it is the interest of justice to condone delay for filing the instant appeal.

It is, therefore, upon acceptance of the instant application, the appeal may kindly be entertained in the pretext of justice.

Dated: 18/01/2024

APPELLANT

Through

[Signature]
Kifayat Ullah Shahabkhel
 Advocate, High Court
 Peshawar
 &
[Signature]
Noor Rahman Wazir
 Advocate, Peshawar.

VERIFICATION:-

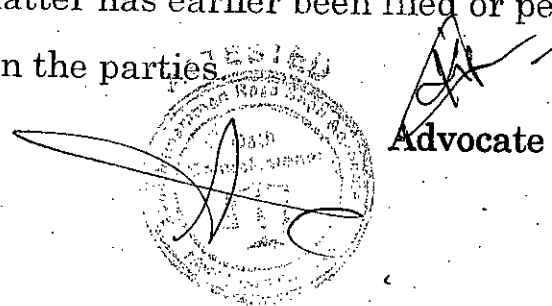
It is verified that the contents of this plaint are true and correct to the best of my knowledge and belief and nothing has been intentionally concealed from this Hon'ble Court.

Verifier

NOTE:-

As per information supplied to me by my client no suit regarding the instant matter has earlier been filed or pending in any court of law between the parties

[Signature]
 Advocate



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2

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Shabir No.4091 the final show cause notice.

The Enquiry Officer, SDPC Hashtnagir, after completion of departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Shabir No.4091 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 11-e /PA, SP/HQrs: dated Peshawar the 20/11 /2021.

Copy to official concerned

①

(12)

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Shabir No.4091 of Capital City Police Peshawar with the following irregularities.

"That you Constable Shabir No.4091 while posted at PS Gulberg, Peshawar were involved in a criminal case vide FIR No.2721 dated 28.12.2019 u/s 17(4) PS Chamkani. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer/committee, as the case may be.

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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

(12)

✓ 11-E
20

ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Shabir Khan No.4091 of Capital City Police Peshawar on the allegations that he involved in criminal case vide FIR No.2721 dated 28.12.2019 u/s 17(4) PS Chamkani.

In this regard, he was placed under suspension and issued charge sheet and summary of allegations. SDPO Hashtnagri was appointed as E.O. He conducted the enquiry and submitted report/finding that the accused constable involved in a heinous criminal case and recommended for major punishment vide Enquiry Report No.15/E dated 14.01.2021.

Upon the finding of E.O, he was issued final show cause notice but he failed to receive the said notice or submit reply as yet.

From perusal of enquiry papers & other material available on record, the undersigned came to conclusion that the alleged officials found guilty being involved in criminal case. Therefore, FC Shabir Khan No.4091 is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect.

Enc (12)

SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 470 / Dated 01/2 /2021

No. 786-93 /PA/SP/dated Peshawar the 08/02/2021

Copy of above is forwarded for information & n/action to:

- ✓ The Capital City Police Officer, Peshawar.
- ✓ The SSP Investigation, Peshawar
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI,
- ✓ CRC & FMC along-with complete departmental file.

08/2021

خدمت جناب سکی سی کپٹن۔

محمد شبیر خان ولد گل بہادر سندھ شیخ محمدی کپٹن۔ کا
رہائشی پتہ۔
(... سائل)

جناب عالی! سائل صحت ذیل عرض رساں ہیں:

۱) یہ کہ سائل ایک مہذب اور قانون کی پاسداری کرنے والا
اور نہایت بڑا عزم شیری ہے۔
۲) یہ کہ سائل کو بد قسمتی سے ایک چھوٹے 'FIR' میں نامزد
کیا ہوا تھا۔

۳) یہ کہ مقدمہ ہذا میں سائل کو عدالت حضور نے ٹرائل مکمل
پہنچنے کے بعد باعدت تیری کیا ہوا ہے (جو کہ حکم لغو درخواست ہے)
۴) یہ کہ سائل کو مقدمہ ہذا کی وجہ سے لوگوں سے بدخواست کیا
ہو گیا جو کہ اب اس مقدمے میں تیری ہو چکا ہے لہذا
آپ صاحب کو اس بار درخواست کے ذریعے مطلع ہے کہ
دوبارہ لوگری پر بحال کیلجاوے۔ اور سائل تا صیات
آپ کا فکوریہ ممنوع رہے گا۔

لہذا استدعا ہے کہ سائل کو اپنی لوگری
پر واپس بحال کیا جائے اور تمام تر سابقہ
مراعات بھی دلا دی جادے۔

آپ کا شہید

محمد شبیر خان

Belt No # 4091



19

OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable Shabir Khan No. 4091, who was awarded the major punishment of "dismissal from service" under KP PR-1975 (amended 2014) by SP/HQrs; Peshawar vide OB No. 470, dated 08.02.2021.

2- Brief facts leading to the instant appeal are that the defaulter Constable while posted at PS Gulberg was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No. 2721, dated 28.12.2019, u/s 17(4) Police Station Chamkani, Peshawar.

3- He was issued Charge Sheet and Summary of Allegations by SP/HQrs; Peshawar. SDPO/Hashtnagri, Peshawar was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer after conducting departmental enquiry submitted his findings in which he was recommended for major punishment. The competent authority in light of the findings of the Enquiry Officer issued him Final Show Cause Notice but he failed to submit reply and hence, awarded the major punishment of dismissal from service.

4- He was heard in person in Orderly Room. During personal hearing, he was given an opportunity to prove his innocence. However, he failed to submit any plausible explanation in his defense. Therefore, his appeal for setting aside the punishment awarded to him by SP/HQrs; Peshawar vide OB No. 470, dated 08.02.2021 is hereby **rejected/filed being also time barred for about 10 months.**

"Order is announced"

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 3372-72 /PA, dated Peshawar the 19 / 09/2023

Copies for information and necessary action to the:-

1. SP/HQr; Peshawar.
2. AD/IT CCP Peshawar.
3. CRC, OASI & PO.
4. FMC along with complete Fouji Missal.
5. Official concerned.

Before the Honorable I.G

Khyber Pakhtunkhwa Police
Dine Peshawar

Trabit Khan. Belt no 4091 3/0 Gul
Bahadar R/o Inesh. Muzahadi Peshawar
(Applicant)

Written Appeal against the
order Dated 15/9/23 of
"CCPO" Peshawar whereby
the application for reinstatement
was turned down

The applicant submitted as under:

1) that the applicant was appointed as
Constable in District Police on Dated
02/03/2012.

2) that the applicant rendered his services
in Police Department in various
Stations by standing head against
the Aggressor and violator.

3) that each and every Task given
to the applicant was achieved with
due honesty and responsibility.

That in the year of 2019 a false criminal case was plotted against the applicant vide case F.I.R. no. 107/19 Dated 28/12/2019 u/s 17(4) Kanabha P.S. Chamkani, in which the Honorable District and Sessions Judge "Mr. Muhammad Tahid Aurangzai" acquitted the applicant and Decreed the charges baseless.

That the applicant after the registration of the false case, remains in custody for a period of 9 months due to which the applicant remains absent from duties.

That due to absence of the applicant from the duty, show cause notice was issued. However the same was not received and not replied as the absent was behind the BPL.

That as no proper opportunity was not given to the applicant to

3

Show his legal standing before the "Woolley CCPO" infact one sided proceeding was brought up against the applicant, which is not the mandate of law.

Q that fair trial and proceedings is the fundamental right of the applicant, which is guaranteed by the Constitution of Pakistan 1973, however the same was not adopted in true letter and spirit.

Q that initially after getting acquittal from the Court of Additional Session Judge the applicant approach the Woolley "CCPO" for reinstatement in the post of Constable, However the request in this regard was turned down in vehement manner.

Q that feeling aggrieved from the said order, the applicant approach your excellency for his reinstatement.

(4)

for the Post of Constable

It is that the applicant faces serious hardship in routine life having no adequate job - and all of the responsibility of the family is lying on his shoulder

Prayer It is therefore prayed on Acceptance of instant appeal the applicant may kindly be reinstated in the Post of Constable in the best interest of Justice

Applicant
[Signature]
Shobit Chaur

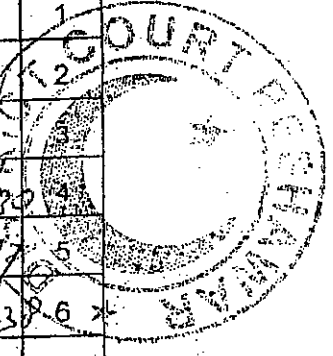
Date 25/9/23

CNIC 17301-71609133
Contact - 0313919033
Bet no - 4091

انٹیکس

بعدالت جناب محرم طاہر اور گزیب، AD&SJ-IX، پشاور

| مقدمہ نمبر | رجوعہ | اصل رجوعہ | فیصلہ | تقطعات |
|----------------------------|---------|-----------|--------------|--------|
| 1/HC | 26/9/20 | | 26/11/23 | 242 |
| سرکار بنام بیبا (م) | | | | |
| نمبر شمار | صفحات | تقطعات | نوعیت کاغذات | |
| | | | ہستہ ۲ | |
| 1 | 1 | 1 | 1 | 1 |
| 2 | 2 | 2 | 2 | 2 |
| 3 | 3 | 3 | 3 | 3 |
| 4 | 4 | 4 | 4 | 4 |
| 5 | 5 | 5 | 5 | 5 |
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| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | | | | |
| | | | | 242 |
| | | | | 28 |
| Checked and found correct. | | | | |



کل تقطعات 7 اور اصل دفتر شد

ایڈیشنل ڈسٹرکٹ ایگزیکٹو جج IX پشاور

دستخط

ATTESTED

23 JUN 2023

(Examined)

District Court Peshawar

29

CHARGE

File No. 01/HC of 2020


Reference: FIR No. 2721 dated 28/12/2019 U/S 17(4) Haraba of Police Station Chamkani, Peshawar.

I, Muhammad Tahir Aurangzeb, Additional Sessions Judge-IX, Peshawar do hereby charge you accused (1) Bahar Ali s/o Kachkol Khan aged about 28 w/o Bara Gate Naway Kalay Nodeh Payan, Peshawar (2) Shabir s/o Gul Bahadar w/o sheikh Muhammadi Bhadber, Peshawar, as follows:-

That on 28/12/2019 at unknown time at Dilazak Road near Purana Chowk falling within the criminal jurisdiction of Police Station Chamkani Peshawar you accused named above duly armed with firearms in furtherance of the common intention of you both, attempted to forcibly snatch Riyo Double Cabin Registration No. APH-300/Islamabad, Model 2019 and three mobile phones on gun point and on his resistance you accused made firing at him whereby and died and thus you thereby committed an offence punishable under section 17(4) Haraba and within my cognizance.

And I hereby direct that you be tried by me for the said charge.

RO & AC
13/01/2021


Muhammad Tahir Aurangzeb,
ASJ-IX, Peshawar

Note: The charge has been read over and explained to accused.

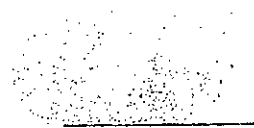
Q. Have you heard and understood the charge?

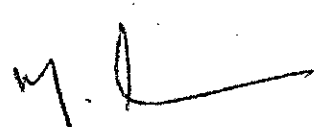
A. Yes.

Q. Do you want to plead guilty or claim trial?

A. I do not plead guilty and claim trial.



Bahar Ali (Accused)


Shabir (Accused)


Muhammad Tahir Aurangzeb,
ASJ-IX, Peshawar

CERTIFICATE u/s 364 Cr.PC

Certified that the above charge has been framed in my presence and hearing and that the record contains a full and true account of the statement made by the accused.


Muhammad Tahir Aurangzeb,
ASJ-IX, Peshawar

~~ATTESTED~~

23 JUN 2023

(Examiner)
District Court Peshawar

**IN THE COURT OF MUHAMMAD TAHIR AURANGZEB,
ADDITIONAL SESSIONS JUDGE-IX/, PESHAWAR.**

01/HC of 2020
State Vs Bahar Ali

ORDER
26.01.2023

10

1. Mr. Jamshed Khan Sr.PP for State present. Accused Bahar Ali on bail present alongwith counsel. Accused Shabbir exempted. Statement of Moharrar Shahab ASI recorded as PW-4. Arguments on application u/s 265-K Cr.PC already heard and available record perused.
2. As per murasila report dated 28/12/2019, reported on 03:20 am regarding unknown time of occurrence. during gusht the police traced unknown dead body and from the pocket of blazer of the deceased CNIC in the name of Imdad Khan was recovered. His inquest report was prepared and the dead body was sent to KMC for PM examination. On the CNIC while number of son of deceased namely Hamza was found written, so he was contacted and informed about the murder. He reported to police that his father was business man and three days back left his house in double Cabin number vehicle number APA 300. He reported that he has no enmity and some unknown persons committed the offence. On this the FIR No. 2721 dated 28/12/2019 u/s 17(4) PPC was registered. The complainant again appeared before police and judicial magistrate on 03/01/2020 i.e. after 05 days of

ATTESTED

23 JAN 2023

(Examiner)
District Court Peshawar

N.L

the occurrence and charged Bahar Ali as well as Shabir for murder of his father. He disclosed that they were close friends to his fathers' and prior to this occurrence his father visited Muree with the accused. In order to snatch the double cabin vehicle and precious mobile phones, the accused committed the offence.

3. IO of the case prepared discovery sketch as well as site plan. On the same day of occurrence, he recovered the vehicle of deceased wherein he found 03 empties of 30 bore pistol from front seat of the vehicle. He also traced bullet marks of the front seat and collected blood from the said vehicle. He prepared a recovery memo in this regard. The said recoveries were effected on 28/12/2019 and on the same day he drafted an application to FSL for sending the bloodstained garments as well as bloodstained cotton for forensic analysis. He also placed on record the inquest as well PM report of the deceased. He made search of the house of the accused and succeeded to arrest both the accused on 06/01/2020 i.e after 09 days of the occurrence which was followed by three days' police custody. Immediately after the arrest of accused the collected empties were sent to FSL on 07/01/2020 and the report of the same is available on file which suggests that the same were

43 1004 2020

Examiner
Peshawar

father left house three days back in double cab/APH/300. I collected blood from the spot of dead body and sealed in parcel NO.1 vide memo Ex PW 3/2. Similarly, I collected bloodstained garments of the deceased brought by Constable Fayaz Badshah vide memo Ex PW 3/3 and sealed in parcel No. 2. The relative of deceased also attracted to the spot and they disclosed about the tracker in vehicle. We searched vehicle with the help of tracker on GT road Pabbi near Habib Solar Shop. We went to that place and found the vehicle No. APH/ 300 Islamabad. I ceased the same and prepared recovery sketch of vehicle Ex PW 3/4 followed by recovery memo Ex PW 3/5. I searched vehicle and found three empties of 30 bore pistol on front seat of the vehicle which I sealed in parcel No. 03 through the same memo. I preserved the finger prints over the vehicle through expert which is available on file as Ex PW 3/6. I sent parcel No. 01 and 02 to FSL vide my application Ex PW 3/7. The complainant himself attached with the investigation recorded his statement u/s 161 Cr. PC wherein he charged accused Bahar Ali and Shabir on the basis of his satisfaction. He disclosed that his father went to Murree with the accused Shabir and on his return they in their mutual connivance in order to occupy the vehicle and mobile phones from his father committed

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[Signature]

fired from different weapons. During police custody, there is pointation of the accused followed by the recovery of weapon i.e. 30 bore pistol. The report of FSL was matching with the crime empties for the recovered pistols. Beside this the cell phone data is also collected by the IO and he also obtained finger prints record however the same were found destructed.

4. On completion of investigation, the case was marked to this court on 17/9/2020, the accused were summoned and Section 265-C Cr.P.C was complied. The charge was framed against accused Bahar Ali and Shabir on 13.1.2021, to which they pleaded not guilty. The prosecution was directed to produce evidence. PW-1 was Hafeez Khan, who submitted challan. PW-2 was Amjid Khan ASI. He was witness of recovery of two pistols, wherein IO recovered two pistols through recover memo Ex PW 2/1 as pistols of both the accused. During the relevant days I was posted as SI PS Chamkani. Investigation in the instant case was entrusted to me. It was a case of unseen occurrence and the report was made against unknown accused by the complainant. I went to the place of occurrence on receipt of copy of FIR where I prepared site plan on pointation of Ibrahim Khan SI which is Ex PW 3/1. The complainant disclosed in the murasila that his

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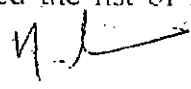
(Examiner)
District Court Peshawar

W. L.

Qatle Amad. I produced the complainant before the learned JMJC and his statement was recorded u/s 164 Cr.PC on my application Ex PW 3/8. I raided the house of accused Shabir on 4.12.2020 and the memo is Ex PW 3/9. Accused was not available in his house. Similarly I raided the house of accused Bahar Ali vide Ex PW 3/10 and he was also not available. Tahir Khan ASI and Ala Ud Din ASI arrested accused Bahar Ali vide card of arrest Ex PW 3/11 and Shabir vide Ex PW 3/12 on 6.1.2020. I placed on record their DD Ex PW 3/13 and Ex PW 3/14. I produced both the accused for police custody vide Ex PW 3/15, which was allowed for three days. On the same day Shahab ASI/Moharar produced two pistols of accused Shabir without number, 30 bore and five live rounds and of accused Bahar Ali 30 bore 31031010 with 08 live rounds which I took into possession and sealed pistols in parcel No. 04 while 13 live rounds in parcel No. 05 vide recovery memo already Ex PW 3/1. I placed on record the separate FIRs registered against the accused u/s 15AA with respective recovery memos. These pistols were recovered by Ala Ud Din and Tahir Khan at the time of arrest of accused and they handed over the same to moharar. I received the Postmortem report and placed the same on file. I prepared the list of legal heirs Ex PW 3/16. I made

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addition in section of law from 302 PPC to 17(4) Haraba PPC. Initially I sent the empties to FSL on 07.01.2020 and the report is Ex PW 3/17. After recovery of pistols I sent the empties collected from the spot in parcel and the pistol recovered from the accused to FSL vide my application and report is Ex PW 3/18. I also sent the vehicle for forensic analyses and the report is Ex PW 3/19. I received the FSL report of bloodstained garments as Ex PW 3/20. During custody the accused volunteered to made pointation of the spot which on their pointation was recorded through pointation memo Ex PW 3/21. I also made addition in the site plan with red ink Ex PW 3/22. The applications drafted for FSL and finger prints etc are Ex PW 3/23 to 3/25 and the original of finger prints Ex PW 3/26. I collected CDR data of SIM of accused and deceased which is Ex PW 3/27 consist upon 23 sheets. I also collected the tracker data of vehicle Ex PW 3/28. I recorded the PWs as well as witnesses of recoveries as and when required in the investigation and are available on the file. I used the seal of KR during my investigation while sealing the parcels. I have seen the Exhibited documents and the same are placed by me on judicial file and the handwritten documents are in my handwriting. I placed on record the pictures of vehicle

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District Court

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and pointation proceedings Ex PW 3/29. I received the finger prints report Ex PW 3/30. During my investigation, as from the allegations of complainant, CDR data recoveries of pistols and empties, last seen evidence and other circumstances, I found the accused fully involved in the commission of offence. so handed over the file to SHO for submission of complete challan.

5. Statement of PW-3 was recorded on 21.5.2022 thereafter the learned counsel for accused moved application u/s 265-K Cr.PC however this court granted number of opportunities to prosecution for production of remaining evidence. They have not produced evidence, hence this court heard arguments on application u/s 265-K Cr.P.C for knowing the reason of non-production of evidence and decision on the application.

6. Perusal of record shows that it is a case of unseen occurrence and based on circumstantial evidence. On 28/12/2019, the police discovered an unclaimed dead body on Dalazak road and there was a CNIC in the name of Imdad Khan in the pocket that dead body. The local police sent the dead body for PM examination and also traced the cell phone numbers on the basis of that CNIC. One of the phone number was of Hamza, who was son of deceased. He came

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N. L.

and reported the matter that his father was businessman. Some three days back, he went muree in double cabin Vigo number APA-300 Islamabad. Someone committed murder on the way back. Hamza was again recorded by the IO and under section 164 Cr.PC wherein he has shown belief that accused Bahar Ali and Shabir committed the murder of deceased as they were trying to snatch vehicle, mobile phones from the deceased, who resisted and the accused committed murder. They have thrown his father on the earth after murder and took the vehicle and mobiles with them.

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7. It is on record that the vehicle of deceased was also recovered by the IO on that day wherefrom he recovered 03 empties and sealed the same in parcel no. 3. He has also collected some finger prints from the vehicle. On 06.01.2020, both the accused Bahar Ali and Shabir were arrested. The arrival report Ex PW 3/13, of Tahir Khan ASI shows that on 06.01.2020, he arrested accused Shabir vide card of arrest PW 3/13. IN the said arrival report he arrested accused Shabir and recovered pistol 0.30 bore alongwith 05 live rounds from his possession. He registered case FIR No. 35 dated 06.01.2010 u/s 15-AA against accused. Similarly, on the same date Naqalmad No. 11 Ex PW 3/14 shows that Alawodin

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N-L

ASI arrested accused Bahar Ali and also recovered one 30 bore pistol bearing NO. 31031010 alongwith 08 live rounds and one spare magazine from accused and also recovered the license. He registered FIR No. 36 dated 06.01.2020 u/s 15-AA against accused Bahar Ali. IO of the case arrested accused in this case vide card of arrest Ex PW 3/9 and 3/11. He obtained the said pistol from Shahab Moharar of Police Station. He obtained both the pistols from moharar and sealed in parcel no. 04. He sealed the live rounds in parcel No. 05 vide recovery memo Ex PW 2/1. The FSL report shows the same matching.

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8. The only evidence in the instant case was that the source of satisfaction of the complainant and recoveries of empties, recovery of pistol followed by the FSL report. There is no other evidence in the instant case. So far as the satisfaction of complainant is concerned, it was an unseen occurrence and the subsequent statement of complainant shows that he has charged accused facing trial on the basis of surmises. He stated that his father was having relations with accused Shabbir and he went to Murree with accused Shabbir. On return from Murree, both the accused in connivance with each other for the purpose of snatching vehicle, mobile phones committed Qatl-e-Amd. He has not disclosed any

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M. I.

source to the IO from which he received this information. He was summoned time and again for recording his statement but he did not appear. If he appeared, he was not allowed under the law to produce an explanation of his belief which he has not provided to the IO. The non-disclosure of source of satisfaction promptly during investigation makes his statement inadmissible.

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9. So far as recoveries of empties as well as pistols are concerned the recovery of empties, pistols etc is reflected in register No: 19 and the date in column No: 2 is reflected as 28.12.2019. It is against the facts because parcel No: 1, 2 and 3 were prepared on 28.12.2019 while parcel No: 4 and 5 of pistols were prepared on 07.01.2020. The prosecution is not allowed to speak against their own register. They are not allowed to take this stance that initially parcel No: 1 to 3 were prepared and thereafter on recovery, parcel No: 4 and 5 were endorsed there and the date was missed due to clerical mistake. It is not believable because the vehicle was recovered on the same day and it is reflected after the recoveries of pistols in register No: 19 which suggest plantation of evidence. This fact was confronted with IO and register No: 19 was exhibited as EX PW3/R-1. Furthermore, both the accused are not arrested in this

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case initially and they were arrested in a case under Section 15-AA. IO was required to record the statements of those officials in whom presence the recovery of pistol was effected from the accused but he has not recorded statement of ASI Tahir and ASI Alu ud Din. This deficiency on the part of IO was fatal to proof the recovery from accused. Leaving aside this aspect IO has admitted this fact that the vehicle was recovered on the same day then its reflection must be in register No: 19 prior to entries of pistols because there is intervening gap of seven days in between the two. The logical interpretation of the fact is that the pistol were available with the IO on the date of recovery of the vehicle or the recovery of empties, pistols and vehicle was effected after 07.1.2020. Both the situation discredit the prosecution version. In such like situation the recoveries of empties and matching report of pistols do not serve any benefit to the prosecution case. A single doubt would be sufficient for acquittal of the accused. In the circumstances, even if the remaining PWs are produced and examined there is no probability of conviction of accused in the instant case. As such, the accused facing trial Bahar Ali and Shabir are acquitted of the charges leveled against them U/S 265-K Cr.P.C. Accused are on bail, their bail bonds

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stands cancelled and sureties are relieved from the liability of bonds. The case property if any be kept intact till the expiry of period provided for appeal /revision and thereafter be disposed of in accordance with law.

10. File be consigned to record room after necessary completion and compilation.

Announced
26.1.2023




M. T.
Muhammad Tahir Aurangzeb,
AD&SJ-IX, Peshawar.

ATTESTED

[Signature]
23 JUN 2023
(Examiner)
District Court F

| | |
|----------------------|--------------------|
| No. | 37/11/23 |
| Dated of Application | 23/6/23 |
| Name of Applicant | P. H. X |
| Word / Page | X |
| Fee | X |
| Signature | <i>[Signature]</i> |
| Dated of Filing | 23/6/23 |
| Dated of Delivery | 23/6/23 |

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| | | |
|-----------------------------|--|---------------------------------------|
| تیت 50 روپے | 28888 | پشاور بار ایسوسی ایشن، خیبر پختونخواہ |
| ایڈویٹ: 10-7835 |    | |
| بار کونسل ایسوسی ایشن نمبر: | | |
| رابطہ نمبر: 0300-5844181 | | |

بعدالت جناب: سردار شکیل احمد خان صاحب

| | | | |
|-----------|--------|-------------|-----------|
| Appellant | مخائب: | ServicApped | دعویٰ: |
| vs Shabir | | | علت نمبر: |
| | | | مورخہ: |
| | | | جرم: |
| | | | تھانہ: |

بابت تحریر آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام شہر کیلئے کفایت اللہ شہید صاحب الزور صاحب کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف 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 یا یک طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگہبانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے 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 سند رہے

المرقوم: /20

بد واد شد الع بد

مقام: ساور کے لیے منظور ہے۔

شکیل احمد خان صاحب نے یہاں پر دستخط کیے ہیں۔

Accepted