

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

Service Appeal No. 218 / 2022

*Noor Shah Ali S/O Jamrooz Khan, Ex-Junior Clerk / Muharrir, O/o
Civil Judge / Judicial Magistrate, Shabqadar (Charsadda)*

..... Appellant

VERSUS

The District & Sessions Judge, Charsadda and others

..... Respondents

INDEX

S. No.	Description of Document	Page	Annexure
1	Reply / Comments of Respondent No. 01 & 03	1-4	-
2	Statement of allegations	5	A
3	Charge Sheet	6	B
4	Show Cause Notice	7	C
5	Office Order No. 7763-68/DJ-15/Chd dated 23.12.2006 / Dismissal Order	8	D
6	Judgement: Court of Special Judge, Anti-Corruption	9-22	E
7	Judgement: august Peshawar High Court, Peshawar	23-33	F
8	Judgement: august Supreme Court of Pakistan	34-37	G
9	Affidavit	38	

c/c

(1)

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

Service Appeal No. 218 / 2022

*Noor Shah Ali S/O Jamrooz Khan, Ex-Junior Clerk / Muharrir, O/o Civil
Judge / Judicial Magistrate, Shabqadar (Charsadda)*

..... *Appellant*

VERSUS

**Khyber Pakhtunkhwa
Service Tribunal**

The District & Sessions Judge, Charsadda and others

Diary No. 12581

Dated 07.05.2024

..... *Respondents*

Respectfully sheweth,

Para-wise comments on behalf of respondent No. 2 (Registrar
Peshawar High Court, Peshawar) are as follows:

Preliminary objections:

1. That the appellant has got no cause of action to file instant appeal.
2. That the appellant has not come to this Hon'ble tribunal with clean hands.
3. The appellant is estopped to sue by his own conduct.
4. The appellant has been convicted and sentenced u/s 409/161/436 PPC r/w Sections 5(2) of the Prevention of Corruption Act 1947 for 5 years R.I with fine of Rs.25000/-, 2 years R.I with fine of Rs.75,000/-, 5 years R.I with fine of Rs.20,000/- and 3 years R.I with fine of Rs.10,000/- by learned Senior Special Judge Anti-Corruption NWFP, Peshawar vide judgment dated 21.08.2006 in case No. 40 of 2005, however, vide judgment dated 17.10.2006 in CR No. 569 of 2006, the august Peshawar High Court, Peshawar while maintaining the conviction reduced the sentences to the one already undergone by him. The august Supreme Court of Pakistan vide judgment dated 14.09.2009

3

in Criminal Appeal No. 279 of 2008 maintained the conviction of the appellant. Thus, on the score of conviction alone, the appellant is not entitled to reinstatement as well as to any other relief.

On Facts:

1. Need no comments being facts on record.
2. Need no comments being facts on record.
3. Need no comments being facts on record.
4. Correct. The learned Additional Sessions Judge-I, Charsadda in the capacity of Authorized Officer under the then disciplinary rules (NWFP Efficiency & Discipline Rules 1973) suspended the accused official.
5. Stance of the appellant is incorrect. Learned Additional Sessions Judge-I, Charsadda in the capacity of Authorized Officer duly appointed by the Competent Authority under the then disciplinary rules (NWFP Efficiency & Discipline Rules 1973) served the appellant with "Statement of allegations" and "Charge Sheet" (**Annexure A & B**) and it was the mandate of Authorized under the ibid rules.
6. Need no comments being facts on record.
7. Correct. The august Peshawar High Court, Peshawar maintained the conviction and reduced the sentences to the one already undergone by them.
8. Correct to the extent that Mujeeb-ur-Rahman is still performing duty as Bailiff (now promoted as Junior Clerk / Naib Nazir) in the court of Senior Civil Judge, Charsadda and the rest of para is incorrect hence denied. Actually, Mujeeb-ur-Rahman was not implicated in the FIR regarding burning of court's record, therefore, only his statement was recorded in the inquiry proceedings for the purpose of investigation.

15

9. Incorrect, hence denied. All the legal & codal formalities were complied with by the learned Authorized Inquiry Officer as well as the competent authority before imposing the major penalty upon the accused official. Appellant was given an opportunity of personal hearing by the competent authority as reflected in the office order No. 7763-68/DJ-15/Chd dated 23.12.2006 (copy of show cause notice and office order are **(Annexure C & D)**).

10. Incorrect, hence denied. Show cause notice (**Annexure C**) was issued to the accused official and the appellant was dismissed from service after recording of conviction and sentenced by the Special Court Anti-Corruption Peshawar u/s 409/161/436 PPC and under section 5(2) of the Prevention of Corruption Act-1947 and held the accused liable for offences against the public office / trust (**copy of judgment annexure E**), details whereof have been given in the preliminary objection.

11. Correct.

12. Correct.

Grounds:

A. Incorrect, hence denied. Detailed reply is given in preliminary objection No. 4 and reply of Para No. 10.

B. Incorrect, hence denied. Inquiry under the then NWFP Efficiency & Disciplinary Rules 1973 was conducted in accordance with the rules on the subject. The accused official was brought before the Inquiry Officer on each and every date of hearing from the jail in police custody.

C. Incorrect, hence denied. The appellant was dismissed from service after recording of conviction and sentence by the competent court of jurisdiction of which was maintained upto the Apex Courts (copy of judgment of August Peshawar High Court, Peshawar and august Supreme Court of Pakistan are annexed as **Annexure F & G**). The

A

concurrent conviction judgements up to the apex courts are irreputable proofs of misconduct and corruption of the accused official. Mere conviction in criminal case is even a sufficient ground for imposition of major penalty.

- D. The name of Mujeeb-ur-Rahman was not implicated in the FIR relating to the occurrence; however, he was interrogated and his statement was taken only for the purpose to exhume the facts of the matter.
- E. The departmental proceedings were based on the same allegations/offence whose trial was under process and opinion of the officer at inquiry stage would sabotage the trial either way. Therefore, the proceedings were adjourned till the decision of the trial.
- F. Incorrect. It was the mandate of Authorized Officer and not the inquiry office to serve Show Cause Notice and Statement of Allegations to the accused official under NWFP Efficiency & Discipline Rules 1973.
- G. Incorrect. All the orders were passed in accordance with law and no violation of law has been made.

In view of the above it is solicited that appeal of the appellant being devoid of merits, may kindly be dismissed with cost.

Respondent No. 2

Registrar
Peshawar High Court
Peshawar.

STATEMENT OF ALLEGATION

(12)

(18)

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

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

Dated: 01/10/2005

- sd -
(SHOAIB KHAN)
Addl. District & Sessions Judge-I,
Charsadda / Authorized Officer

e/c

Le
Attested

CHARGE SHEET

I, Shoaib Khan Addl. Sessions Judge-I Charsadda duly appointed as Authorized Officer vide order of competent authority / Honourable District & Sessions Judge, Charsadda dated 26/08/2005, do hereby charge you accused official Noor Shah Ali Civil Moharrir attached to the court of CJ / J.M Shabqadar as follows:

That you accused along with your co-accused Liaqat, as per confessional statement of accused Raham Sher recorded by a Competent Court on 24/08/2005 in case FIR No. 313 dated 31/05/2005 u/s 452/506/342/436/477/148/149 PPC at P.S Shabqadar have entered into a criminal conspiracy with the accused Raham Sher for setting on fire official / judicial record of the court of Civil Judge / Judicial Magistrate, Shabqadar in consideration of Rs. 150,000/- which in addition to criminal offence as leveled in the FIR is also mis-conduct within the meaning of section 2 (e) of the NWFP Govt. Servants (E & D) Rule 1973.

And I hereby informed and direct that you will be inquired and proceeded against on the above charge.

R.O & A.C
22/10/2005

(SHOAIB KHAN)
Addl. District & Sessions Judge-I,
Charsadda / Authorized Officer

- Q: Have you heard and understood the charge so framed against you?
A: Yes
Q: Do you admit the charge so framed against you as correct?
A: No. I am innocent. I have committed no offence and never entered into any criminal conspiracy.
Q: Do you want to submit any written defense?
A: I rely on my answer, submitted in response to statement of allegation.

Noor Shah Ali (Accused Official)

R.O & A.C
22/10/2005

(SHOAIB KHAN)
Addl. District & Sessions Judge-I,
Charsadda / Authorized Officer

Attested

ANNEXURE "C"

7

Office Of the

DISTRICT & SESSIONS JUDGE, CHARSADDA

No: ¹³ 772 /D&SJ, Charsadda

Dated: 21/12/2006

From:

The District & Sessions Judge,
Charsadda

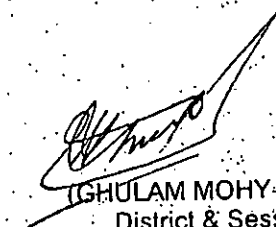
To:

Mr. Noor Shah Ali
Ex. Junior Clerk/Moharrir
to the Court of CJ-I, Shabqadar

Subject: SHOW CAUSE.

Memo:

You are hereby directed to appear for personal hearing and explain your position regarding your enquiry/conviction on 23/12/06.


(GHULAM MOHY-UD-DIN MALIK)
District & Sessions Judge,
Charsadda

2774
21/12/06
22/12/06

Attested

27

Office of the

DISTRICT & SESSIONS JUDGE, CHARSADDA

Noor
21/12/06

OFFICE ORDER:

Whereas, Mr. Noor Shah Ali was appointed as a Junior Clerk/Moharrir in the establishment of undersigned, who was nominated by the co-accused for entering into conspiracy with his co-accused for setting on fire the Judicial record of the Court of Civil Judge-I, Shabqadar and receiving bribe in this connection.

Whereas, he has been tried by the Special Court Anti Corruption for the charges leveled against him U/S 409/161/436 PPC and Section 5(2) dated 21/08/2006 of the Prevention of Corruption Act and convicted. The said order of conviction was also upheld by the Hon'ble Peshawar High Court, Peshawar vide judgment dated 17/10/2006. In this respect an inquiry was conducted under (Efficiency & Disciplinary) Rule-1973, which was completed on 18/12/2006 and he was served with a notice of show cause by the undersigned for personal hearing. Today he appeared and failed to prove himself not guilty.

Therefore, he is dismissed from service w.e.f. 21/08/2006.

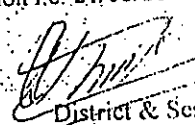
(GHULAM MOHY-UD-DIN MALIK)
District & Sessions Judge,
Charsadda

OFFICE OF THE DISTRICT & SESSIONS JUDGE, CHARSADDA

Endst. No. 7763-68 /DJ-15/CHD Dated 23/12/2006

Copy forwarded to:

1. The Worthy Registrar, Peshawar High Court, Peshawar
2. The Senior Civil Judge/JM, Charsadda
3. The Civil Judge/JM-I, Shabqadar
4. The District Account Office, Charsadda
5. The Accountant of this Court is directed to make necessary entry in the service record of the official in accordance with law and ensure the recovery of salary, if paid to the said official after the date of conviction i.e. 21/08/2006.
6. The official concerned.


District & Sessions Judge
Charsadda

Attested

ANNEXURE "E" J-9

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

Case No.40 of 2005.

Date of Decision. 21-8-2006



State Versus:-

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

ATTESTED

EX JUDGE
Court of Special Judge
Anti-Corruption
NWFP, Peshawar.
23/8/06

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

Judgment:-

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

SPECIAL JUDGE
Anti-Corruption NWFP
Peshawar.
21-8-06

Attested

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

The Presiding officer forwarded this statement of Sheharyar chowkidar under his covering letter Ex.PW1/2, to the police station for registration of case. This report was taken as first information and case was registered as FIR No.343 Ex.PA u/s 452/505/342/436/477/148/149/PPC relying upon the information provided by Sheharyar.

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

In course of investigation, police got a clue that one local proclaimed offender Ashfaq was behind the incident, and

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

Attested

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

On 23.8.2005 Raham Sher was arrested and on 24.8.2005 he was produced before the magistrate vide application Ex.PW8/1 and he recorded his confessional statement Ex.PW1/4 u/s 364 Cr.PC. In his confessional statement Raham Sher disclosed that he had developed friendly relations with co-accused Noor Shah Ali and Liaqat Ali both moharrirs of court of civil judge, Shabqadar, in course of his civil suit titled "Sarwar vs-Raham Sher" and that Ashfaq co-accused wanted to police in so many criminal cases was raided for which Ashfaq suspected Raham Sher as police informer and asked him (Raham Sher) to end up the court cases pending against him any way. According to this statement the accused Noor Shah Ali and Liaqat Ali were approached and a bargain against Rs.1,50,000/- was struck which amount was paid to Noor Shah Ali and after one day the record was burnt.

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

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

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

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

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

ATTESTED

EX. DIVER
COURT OF SPECIAL JUDGE
Anti-Corruption N.W.D. Dera
H.Y.P.P. 8/8/06
SPECIAL JUDGE
Anti-Corruption N.W.D. Dera
21-8-06

Attested

12
37 57

The following persons were examined as Prosecution witnesses :-

- 1) Shaukat Ahmed khat, Judicial Magistrate, Shabqadar as PW-1.
- 2) Ikramullah Khan, ASI, P.S. Shabqadar as PW-2.
- 3) Mujeebur Rehman, Bailiff of the court of Judicial Magistrate/Civil Judge, Shabqadar as PW-3.
- 4) Muzaffar Khan S.I. P.S. Pabbi as PW-4.
- 5) Badshah Gul, ASI, P.S. Kabil as PW-5.
- 6) Mushtiq Ahmed, SHO, P.S. Mattani as PW-6.
- 7) Rahim Shah, SHO P.S. Charsadda as PW-7.
- 8) Hamdullah S.I. Investigation P.S. Shabqadar as PW-8.

one Qamar Zaman was abandoned by the prosecution.

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

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

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

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

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

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

ATTESTED

22/8/06
Court of Special Judge
Anti-corruption
21-8-06

SPECIAL JUDGE
Anti-Corruption

21-8-06

Attested

(21/13/28)

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

In course of cross examination this PW which he pointed out that he had recorded 164 Cr.PC statement of Mujeebur Rehman PW-3 also. The witness denied that he had supervised the investigation rather stressed that he recorded the statements as Illaqa Magistrate. In his cross examination he rebutted the suggestion that seal of the court was affixed on the confessional statement Ex.PW1/4 before recording the text and obtaining thumb impression of the accused. He gave detail account of the events while recording this confessional statement according to which the accused was produced on 8.30 AM and that after an hour time given for relaxation. Statement was recorded at 9.30 AM which lasted till 9.45 AM. He rebutted the suggestion that the accused had told him that he was in police custody since 21.8.2005 and that he was innocent. The witness admitted that he did not refer the accused for medical check up before and after recording confessional statement. About the 164 Cr.PC statement of Mujeebur Rehman Bailiff the witness rebutted the suggestion that the statement Ex.PW3/1 was provided to him and he adopted the same or that he obtained signature of Mujeebur Rehman on a blank paper.

ATTESTED

M. J. Khan
Special Judge
Anti-Corruption
Peshawar
21-8-06

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

Attested

38/14
29

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


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

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

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

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

ATTESTED


SPECIAL JUDGE
Anti-Corruption R.W.D.D.
Peshawar
21-8-06

Attache

15
(10) (30)

PW-0 Hamdullah S.I. investigation Shabqadir got investigation in hand on 25.6.2005. He arrested the accused Sajjad, obtained his custody and on spy information arrested Raham Sher on 23.8.2005, who disclosed the names of the co-accused Liaqat Ali, Noor Shah Ali, Adnan and Ashfaq. He produced Raham Sher on 24.8.2005 vide application Ex.PW0/1 before the magistrate and got recorded his confessional statement. He arrested Liaqat Ali and Noor Shah Ali on 24.8.2005 and got their police custody on 25.8.2005 from the magistrate on applications Ex.PW8/2, PW8/3 & PW8/4 and admitted both the accused to judicial lock up without a confessional statement. This PW look into possession Motor Cycle PRR-1617 produced by Imroze brother of the accused Noor Shah Ali vide recovery memo Ex.PW2/2. He also got recorded statement of PW-3 Mujeebur Rehman Ex.PW3/1 u/s 164 Cr.PC and got issued 204 Cr.PC warrants in respect of accused Ashfaq and Adnan. After addition of section 5(2)PC Act, he handed over investigation to Inspector Rahim Shah.

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

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

ATTESTED

[Signature]
M. J. J. J.
28/8/06

[Signature]
SPECIAL JUDGE
Anti-Corruption N.Y. 2007
Peshawar
21-8-06

Attested

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

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

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

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

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

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

ATTESTED

[Handwritten signature]
28/8/06
[Handwritten signature]
SPECIAL JUDGE
Corruption & Misconduct
21-8-06

Attested

17
42
32

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

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

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

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

DWS

ATTESTED

[Handwritten signature]
21-8-06

[Handwritten signature]
21-8-06

Attested

63-18-33

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

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

ATTESTED

Handwritten signature and date: 21-8-06

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

Attested 10

19
614 (34)

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

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

Statement of CW-1 however leads us some where else. The witness has produced record of civil suit No.287/1 titled "Sarwar Vs- Raham Sher" instituted on 11.4.2002 by Sarwar Khan and 21 others against Raham Sher S/o Sher Muhammad and 11 others. The record produced by this witness includes Register civil suit, Order sheets of civil suit No.287/1 "Sarwar ETC Vs-Raham Sher ETC", Plaint and written statement of this case, certificate of reconstruction of the file and special power of attorney of accused Raham Sher and his thumb impressed Vakalatnama in favour of Muhammad Fayaz advocate submitted on 09.8.2005. This record proves it more than sufficiently that civil suit "Sarwar Vs- Raham Sher" is pending since 11.4.2002, Raham Sher is party as one of the defendants in the case and he has been actively contesting it from the very beginning by submitting his written statement and has engaged counsel there in and that the case is still pending after reconstruction of the file burnt down in the accident. Question arises that if the confessional statement is not genuine then how this case was mentioned in his statement while it finds no mention on record of investigation before this statement? In the absence of something to the contrary, the only possible answer to this can be that it was the accused Raham Sher who knew about his case and he genuinely mentioned it in his confessional statement. If contents of the confessional statement

ATTACHED

MP
21-8-06
[Signature]

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

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

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

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

ATTENDED

EX: MOHARRIR
Court of Special Judge
Anti-Corruption
NITTF
21-8-06

Attested

21
46
36

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

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

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

- 1) They both are convicted and sentenced U/S 400/PPC to imprisonment for Five Years (5) R.I. with a fine of Rs.25,000/- (Twenty Five Thousand each) or in default thereof shall suffer six (6) months S.I. each.
- 2) They are also convicted and sentenced U/S 161/PPC to Two Years (2) R.I. with a fine of Rs.75,000/- (Seventy Five Thousand) each or in default thereof shall suffer One year S.I. each.
- 3) They are convicted and sentenced U/S 436/PPC to Five Years (5) R.I. with a fine of Rs.20,000/- (Twenty Thousand) each or in default thereof shall suffer Four (4) months S.I. each.
- 4) They are further convicted U/S 5(2) of the Prevention of Corruption Act, 1947 and sentenced to Three (3) years R.I. each with a fine of Rs.10,000/- (Ten thousand) each or in default thereof shall suffer Three (3) months S.I. each.

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

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

ATTESTED

EX AM PLE
 Court of Sessions Judge
 Anti-Corruption
 N.W.F.P. District
 21-8-06

Attested

22
47 (37)

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

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

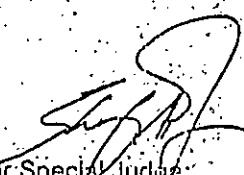
The absconding accused Ashfaq has already been arrested and supplementary challan submitted against him and separate trial is going on.

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

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

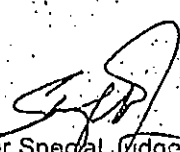
File be consigned to the record room.

Announced,
Peshawar.
21.8.2006.


Senior Special Judge,
Anti-Corruption NWFP,
Peshawar.

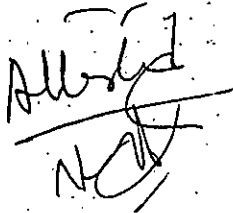
Certificate.

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


Senior Special Judge,
Anti-Corruption NWFP,
Peshawar.

ATTESTED





Attested
14

BEFORE PESHAWAR HIGH COURT, PESHAWAR

Cr. Appeal No 569/2006



Handwritten notes: 'to', 'shah', 'DRO', 'Counselor', 'New'

- 1. Liaqat Ali S/O Shakhel R/O Mirzai, Ex-Moharrir, Court of Judicial Magistrate Shabqadar, Presently lodged in District Prison/ Jail, Charsadda
 - 2. Noor Shah Ali S/O Jamroz R/O Sakhtar, Ex-Moharrir, Court of Judicial Magistrate, Shabqadar Presently lodged in District Prison/ Jail, Charsadda
- (Appellants)

VERSUS

The State

(Respondent)

Appeal against judgement and order dated 21-08-2006 of learned Senior Special Judge, Anti-Corruption, Peshawar, whereby while convicting appellants under Section 409/161/436 PPC and Section 5 (2) of Act, they both are sentenced as:

- (1) They both are convicted and sentenced under Section 409 PPC to imprisonment for two years (2) R.I with a fine of Rs 25,000/- (Twenty five thousand each) or in default thereof shall suffer six (6) months S.I each
- (2) They are also convicted and sentenced under Section 161 PPC to Two years (2) R.I with a fine of Rs 15,000/- (Seventy five thousand) each or in default thereof shall suffer one year S.I each
- (3) They are convicted and sentenced under Section 436 PPC to Five years (5) R.I each with a fine of Rs 20,000/- (Twenty thousand) each or in default thereof shall suffer four (4) months S.I each
- (4) They are further convicted under Section 5 (2) of the Prevention of Corruption Act, 1947 and sentenced to Three (3) years R.I each with a fine of Rs 10,000/- (Ten thousand) each or in default thereof shall suffer Three (3) months S.I each.

FILED TODAY

Asst. Registrar

21-08-2006

ATTESTED

EXAMINER

Attested by

370

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

JUDGMENT

Cr. Appeal No. 569 of 2006
Date of hearing 17-12-2006
Petitioners/Appellants (Liaquat Ali etc.) By Mr. Razaullah Khan
Respondent (State) By Mr. Muhammad Afzal Khan

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

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

TESTED
EXAMINER

Attorney

(31)

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

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

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

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

TESTED

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

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

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

8. Mr. Safirullah Khan, Advocate the learned counsel for the appellants in Cr.A. No.60//2000 argued that the confession was not voluntary and it was extorted. Shaukat Ahmad P.W.1 was complainant in the case, therefore, he should not have recorded the confessional statement of the accused. The thumb impression of Raham Sher

TESTED
EXAMINER

33

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

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

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

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

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

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

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

TESTED
EXAMINER 3

24

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

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

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

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

18. The argument of the learned counsel for the appellants that the entire investigation was conducted by Sub-Inspector Hamdullah (P.W. 8) who was not authorized under section 5-A of PC Act 1947 has no force in it. The contents of Section 5-A of the said Act are reproduced hereunder for convenience:-

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

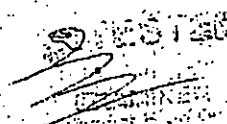
19. The perusal of the record reveals that on registration of the case, Muzafar Khan, ASI was entrusted with the investigation of the case. He prepared site plan Ex.P.W.4/1, on the pointation of Shetarya Chowkidar. He prepared the recovery memo Ex.PW.2/1 and took into possession as Ex.P-1, semi burnt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

21/1/98

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

20. It was on 25.6.2005 that the investigation of the case was handed over to Hamdullah, Sub-Inspector (P.W.5). He arrested the accused Sajjad, obtained his custody and on spy information arrested Raham Sher on 23.8.2005, who disclosed the names of the co-accused Liaqat Ali, Noor Shah Ali, Adnan and Ashfaq. He produced Raham Sher on 24.8.2005 vide application Ex.P.W.8/1 before the Magistrate and got recorded his confessional statement. He arrested Liaqat Ali and Noor shah Ali on 24.8.2005 and got their police custody on 25.8.2005 from the Magistrate on applications Ex.P.W.8/2, P.W.8/3 and P.W.8/4 and admitted both the accused to judicial lock up without recording their confessional statements. This P.W. took into possession Motor Cycle PRR-1617 produced by Imroz brother of the accused Noor Shah Ali vide recovery memo Ex.PW.2/2. He also got recorded statement of P.W.3 Mujeebur Rehman Ex.P.W.3/1 u/s 104 Cr.P.C. and got issued warrant is 204 Cr.P.C. against accused Ashfaq and Adnan. After addition of section 5(2) PC Act 194, he handed over investigation to Inspector Rahim Shah.

21. The above mentioned position would reveal that the entire investigation of the case had been completed by Muzafar Khan, ASI (P.W.4) and Hamdullah Sub-Inspector (P.W.5) and during this period none of the senior officials as directed by High Court were associated with the investigation.

REGISTERED


36

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

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

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

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

ALISTAR

37

31

8

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

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

Handwritten signature and a circular stamp, possibly a court seal, located at the bottom left of the page.

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

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

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

TESTEL

EXAMINER

(3)

and should have referred them to some other Judicial Magistrate doing the needful, but he did not care that it was he, who was the complainant and was, therefore, an interested party in the case, and recording of their confessional statements would weaken the prosecution case. The investigation of the case as mentioned above in detail was not done as per Section 54 of the P.C. Act and directions of this Court by a Team of investigators in the light of order dated 31.10.2005. All these factors led me to the irresistible conclusion that there are weaknesses in the prosecution case, but keeping in view the confessional statement of Raham Sher accused, the gravity of the offence committed by the accused, whereby not only 5 files of the cases of Adnan and Ashfaq, his brother, out of 11 cases of serious nature pending against them and one case file of suit No.287/1 "Sarwar Vs. Raham Sher" were burnt and all those files which were intended to be burnt were arranged in such a manner by the two Muharrirs so that if any fire is caused which could later be extinguished those files should be burnt first. I, therefore, while maintaining the conviction reduce the sentences of all the appellants to the one already undergone by them. They shall be set free if not required in any other case. The order of the learned trial Court with regard to the absconding accused shall remain intact and similarly separate challan submitted against the accused Ashfaq shall proceed further in accordance with law.

Announced:
Dated 14.11.2006

M. Talat Farooq
(Judge)

Alhat

[Signature]

CERTIFIED TO BE TRUE COPY

Poshwar
Authorized Officer, Section 75 Acts Order

ANNEXURE "G" 34

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

(4)

PRESENT

MR. JUSTICE SARDAR MUHAMMAD RAZA KHAN
MR. JUSTICE NASIR-UL-MULK

CRIMINAL APPEAL NO. 279 OF 2008

(On appeal from the judgment of the
Peshawar High Court, Peshawar, dated
14.11.2006 passed in Cr. A. No. 569 of
2006)

Liaqat Ali and another

Appellants

Versus

The State

Respondent

For the Appellants:

Mr. Noor Alam Khan, ASC

For the State:

Qari Abdul Rashid, ASC

Date of Hearing:

14.9.2009

JUDGMENT

NASIR-UL-MULK, J.- The appellants, Liaqat Ali and Noor Shah Ali, serving as Moharrirs in the Court of Magistrate/Civil Judge, Shabqadar, at the relevant time, were convicted by the Senior Special Judge, Anti-Corruption, NWFP, Peshawar, under Sections 409/436/161/165-A/182 PPC and Section 5(2) of the Prevention Act, 1947 and sentenced to various terms of imprisonment with the maximum of five years and fine on each count. The sentences of imprisonment were ordered to run concurrently. Their co-accused, Raham Sher, was convicted under Section 165-A PPC and sentenced to imprisonment for two years with fine. The fourth-accused, Shehreyar, Chowkidar in the same Court, was convicted under Section 182 PPC for making false statement and sentenced to 3 months R. I. The fifth accused, Sajjad, was acquitted for want of evidence against him. The appellants assailed their conviction and sentences before the Peshawar High Court, Peshawar. Vide judgment dated 14.11.2006, their conviction was upheld whereas their sentences of imprisonment were reduced to already

ATTESTED

Supdt. Registrar
Supreme Court of Pakistan
ISLAMABAD

undergone. Leave to appeal was granted to the appellants on 11.8.2008, essentially for perusal of the entire evidence.

2. On the night between 30th and 31st May, 2005, a fire broke out in the Court premises of Civil Judge/Magistrate, Shabqadar. On the morning of 31st May, 2005, Sheheryar (Chowkidar), who was supposed to be on night duty, made a report to the Magistrate, Shaukat Ahmed Khan, stating that during the previous night he heard a noise from the corner of the court premises and when he proceeded towards it, he was over-powered by some persons, who had muffled their faces. They took him away to an unknown place. That when he returned in the morning, he found door of the office of the Moharrir open and record of the Court partially burned. On the basis of this statement recorded by the Magistrate, FIR was registered against unknown persons. During the investigation, it was found that one, Raham Sher, a Chowkidar of nearby Petrol Pump, acting as agent for two brothers, Ashfaq and Adnan, who had a number of cases pending in the said Court, had approached the two appellants so as to arrange the destruction by burning of the record of their cases. Raham Sher made a confessional statement and disclosed the above fact that the appellants were paid Rs.150,000/- for the deal. On this information the appellants were also arraigned as accused.

3. We heard Mr. Noor Alam Khan, ASC for the appellants and Qari Abdul Rashid, ASC for the State and perused the record.

4. The learned counsel appearing for the appellants contended that the only evidence against the appellants was the confessional statement of the co-accused, Raham Sher, which itself was insufficient to sustain the conviction of the appellants. That the said confessional statement also suffers from infirmity in that the Magistrate who recorded the confessional statement was also complainant in the case on whose complaint the FIR was registered. It was argued that in the absence of any other evidence, the prosecution case must fail for want of sufficient evidence.

5. The learned counsel for the State argued that the appellants were involved in a heinous crime of the burning court record of which they were the

ATTESTED

Supdt. Registrar
Supreme Court of Pakistan
ISLAMABAD

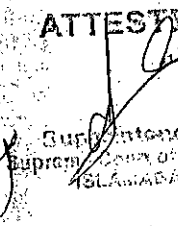
custodians. That the appellants have already been dealt with leniently by the High Court by letting them off after serving the sentence already undergone.

6. Shehreyar, Chowkidar, of the Court premises who was to be on duty on the night when the record was burnt, had come out with an unbelievable story of being abducted by unknown persons and then let off after the said abductors were informed that the work has been done. This statement itself indicates his complicity to some extent in the incident. The story of abduction was introduced in order to explain his absence from duty at the relevant time. The beams were in fact spilled by Raham Sher who acted as conduit between the appellants and Adnan and Ashfaq, two brothers, whose cases were pending before the Court and the Police. Raham Sher was Chowkidar in a Petrol Pump and according to him the appellants were paid Rs.150,000/- for arranging the files of the cases of Ashfaq and Adnan together in such a manner that they could be destroyed with ease. When the record was put on fire, five of the cases pertaining to the said two co-accused were the ones which were the first to burn.

7. The confessional statement of Raham Sher was voluntarily made and there is no reason to discard the same. It otherwise rings true. The argument on behalf of the appellants regarding the complainant being also the Magistrate, recording of confession has no merit. The Magistrate being Presiding Officer of the Court whose record was burnt was performing his administrative duty to inform the Police about the incident. He had not taken any part in the investigation of the case himself. He was not, on this ground debarred, legally or on account of propriety, to record the confessional statement of the accused in the case.

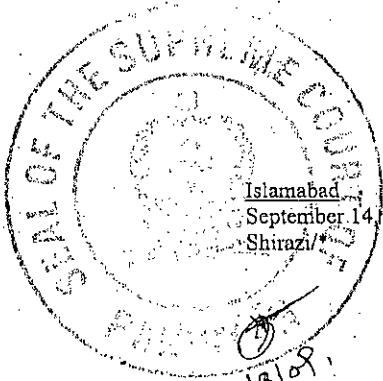
8. The confessional statement of Raham Sher gets support from PW3, Mujeeb-ur-Rehman, Bailiff of the Court, who was sent by the appellants to inform Raham Sher that he was being investigated in the cases. Further more, it was only the appellants who were in a position to put the files of the cases of the co-accused together and in such a manner that they would catch fire first. In the circumstances, we do not consider that the concurrent findings of the three Courts

ATTESTED


Superintendent
Supreme Court of Pakistan
ISLAMABAD

warrant reversal. The appellants have already been dealt with leniently by reducing their sentences of imprisonment to already undergone, keeping in view the heinousness of the offence, the appeal is dismissed.

Sd/- Saad-ur-Rahman Khan, J
Sd/- Nasir-ul-Mulk, J



29/9/09

Certified to be True Copy

23/01/10
Superintendent
Supreme Court of Pakistan
ISLAMABAD

"NOT APPROVED FOR REPORTING"

699/6

Case No: _____ Civil Original
 Date of Presentation: *23-1-10*
 No. of Words: *1800*
 No. of Follies: *12*
 Requisition Fee Rs: *5.00*
 Copy Fee in: *7.65*
 Court Fee stamps: *12.64*
 Date of Completion of Copy: *23/01/10*
 Date of delivery of Copy: *23-1-10*
 Compared by: *Amer Khan Malik Ar*
 Received by: _____

Attested
[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 218/2022

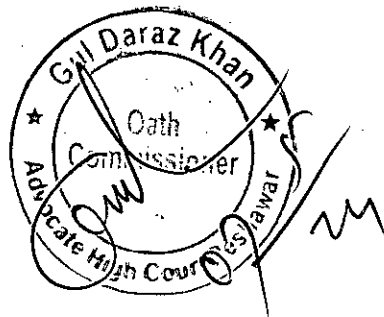
Noor Shah Ali Appellant.

Versus

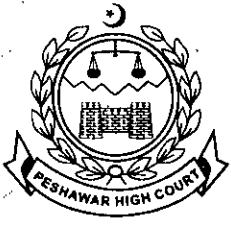
The Registrar PHC & another.....Respondent

Counter Affidavit

I, **Ikhtiar Khan Registrar, Peshawar High Court, Peshawar,** do hereby affirm and declare on oath that the contents of Reply are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.



Deponent.



The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.



Exch: 9210149-58

Off: 9210135

Fax: 9210170

www.peshawarhighcourt.gov.pk
info@peshawarhighcourt.gov.pk
phcpsh@gmail.com

No. 3719 /Admn

Dated Pesh the 07 / 05 / 2024.

AUTHORITY LETTER

Mr. Samil Jan, Assistant Registrar of this Court is authorized to appear/attend the Khyber Pakhtunkhwa Service Tribunal, Peshawar on behalf of respondents No. 02 in "**Service Appeal No. 218/2022 titled "Noor Shah Ali ... vs... District & Sessions Judge, Charsadda "** fixed for 07.05.2024.

(Ikhtiar KHAN)

REGISTRAR,

PESHAWAR HIGH COURT, PESHAWAR.

4