


FORM OF ORDER SHEET

Court of _____

Appeal No. 592/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/04/2024	<p>The appeal of Mr. Wajahat Hussain resubmitted today by Mr. Mudasir Ali Bangash Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 24.04.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

Respected Sir,

It is submitted that the present appeal was received on 28.03.2024, which was returned to the counsel for the appellant for removing objection (Flag-A). Today i.e. 08.04.2024 the learned counsel re-filed the appeal without removing the objection no. 1, 3 & 4.

The appeal is now submitted to your honor under rules 7 (c) of the Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.


REGISTRAR

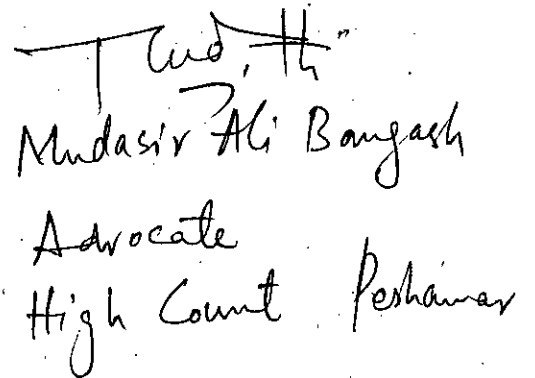
Worthy Chairman

821

22/04/2024

Re-submitted after removal and satisfaction of objections alongwith also submitted an application which is attached herewith

Dated 23/04/2024

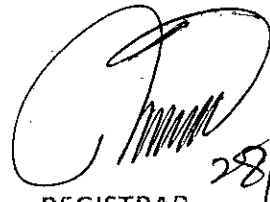

Mudasir Ali Bangash
Advocate
High Court Peshawar

The appeal of Mr. Wajahat Hussain received today i.e on 27 .03.2024 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- ① According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 1 un-necessary/improper party, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.
- 2- The law under which appeal is filed is not mentioned.
- ③ Copy of departmental appeal is not attached with the appeal be placed on it.
- ④ Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal be placed on it.
- 5- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 700 /S.T,

Dt. 28/3 /2024.


28/3/24


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Mudassir Ali Bangash Adv.
High Court Peshawar.

Re-submitted after the removal of objections mentioned above.

- 1- All are the Necessary parties, related to the matter.
- 2- law has been mentioned now under appeal is preferred.
- 3- Departmental Appeal (copy) is missing but even then this appeal is competent.
- 4- copies of charge sheet etc has not been provided by the respondents to appellatant, that is why not attached.
- 5- Three copies of appeal provided and 1 copy for each respondent also provided by providing 6 copies.

Dated: 08/04/2024


Mudassir Ali Bangash
Adv. H.C Peshawar

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 592 /2024

Wajahat Hussain (Ex-Constable No.684) ----- Appellant

VERSUS

The Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer, Kohat Region & another ----- Respondents

APPLICATION FOR REMITTING / RELAXING / REMOVING THE OBJECTIONS NO.3 AND 4 IN OBJECTIONS SHEET NO.700/S.T DATED 28.03.2024 AND ALSO DIRECTING THE RESPONDENTS TO SUBMIT / BRING THE COPY OF APPEAL OF APPELLANT ALONGWITH CHARGE SHEET, STATEMENT OF ALLEGATIONS, SHOW CAUSE NOTICE, ENQUIRY REPORT, REPLIES AND COMPLETE ENQUIRY FROM THE RECORD OF RESPONDENTS TO THIS HON'BLE COURT, AS THE RESPONDENTS DID NOT PROVIDE THE SAME TO THE APPELLANT.

Respected Sir,

1. That the appellant submitted the above mentioned appeal before this Hon'ble Tribunal but the Worthy Registrar of this Tribunal returned the instant appeal by raising five (5) objections.
2. That appellant has already removed / satisfied objection No.1, 2 and 5.
3. That objections No.3 and 4 are still un-removed i.e for the attachment of departmental appeal, charge sheet, statement of allegations, show cause notice, enquiry report, replies with the instant appeal. But the reason for not annexing is that the respondents did not provide the above mentioned documents to the appellant and copy of departmental appeal is missing from appellant.
4. That all the documents are available in the record of respondents and mere formalities cannot abolish the right of appeal of appellant.

It is therefore most humbly submitted that the instant application may please be allowed as prayed for.

Dated : 23/04/2024

Through

Appellant


Mudasir Ali Bangash
Advocate High Court Peshawar

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 592 /2024

Wajahat Hussain (Ex-Constable No.684) ----- Appellant

VERSUS

The Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer, Kohat
Region & another ----- Respondents

INDEX

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3	Attested copy of CNIC of Appellant	A	00-06
3	Attested copy of Impugned order of D.P.O Hangu Dated 20/08/2020	B	00-07
4	Attested copy of Impugned order of The Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer, Kohat Region dated 25/07/2023	C	00-08
5	Attested copy of F.I.R # 892 dated 02/10/2020 and Order & Judgment dated 25/05/2022 of J.M Hangu	D	09-23
6	Vakalat Nama		00-24

Through

Appellant


Mudasir Ali Bangash
Advocate

High Court Peshawar
03459183171

&


Abdul Qasim Ali Shah
Advocate Peshawar

Dated: _____

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 592/2024

Wajahat Hussain (Ex-Constable No.684) ----- Appellant

VERSUS

Inspector General of Police (I.G.P) Khyber Pakhtunkhwa Peshawar and others-
----- Respondents

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Wajahat Hussain

Through

Appellant

Mudasir Ali Bangash
Mudasir Ali Bangash
Advocate
High Court Peshawar
03459183171

&

Abdul Qasim Ali Shah
Abdul Qasim Ali Shah
Advocate Peshawar

Dated: 27/03/2024

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 592 /2024

Wajahat Hussain S/o Sarwar Ali R/o Village Ibrahimzai Tehsil & District Hangu
(Ex-Constable No.684 of District Hangu) ----- Appellant

VERSUS

1. The Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer,
Kohat Region
2. District Police Officer (D.P.O) Hangu ----- Respondents

u/s 4 KP Service Tribunal Act, 1974

**SERVICE APPEAL AGAINST THE ORDER OF THE DEPUTY
INSPECTOR GENERAL (D.I.G) KOHAT / REGIONAL POLICE
OFFICER, KOHAT REGION DATED 25/07/2023**

Respected Sir,

Appellant submits as under;

FACTS:

1. That the appellant was serving as constable in the police department at
district Hangu.
(Attested Copy of Appointment Order is attached as Annexure "A")
2. That on the basis of allegations, the appellant shared derogatory religious
comments on his Facebook account.
3. That a malicious and biased inquiry was conducted against the appellant.
4. That District Police Officer (D.P.O) Hangu held liable the appellant and
announced an order No.OB No.196 dated 20/08/2020 against the appellant,

①

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2024

Wajahat Hussain S/o Sarwar Ali R/o Village Ibrahimzai Tehsil & District Hangu
(Ex-Constable No.684 of District Hangu) ----- Appellant

VERSUS

1. Inspector General of Police (I.G.P) Khyber Pakhtunkhwa Peshawar
2. The Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer,
Kohat Region
3. District Police Officer (D.P.O) Hangu ----- Respondents

Appeal u/s 4 Khyber Pakhtunkhwa Service Tribunal Act, 1974

**SERVICE APPEAL AGAINST THE ORDER OF THE DEPUTY
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Respected Sir,

Appellant submits as under;

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(Attested Copy of Appointment Order is attached as Annexure "A")
2. That on the basis of allegations, the appellant shared derogatory religious comments on his Facebook account.
3. That a malicious and biased inquiry was conducted against the appellant.
4. That District Police Officer (D.P.O) Hangu held liable the appellant and announced an order No.OB No.196 dated 20/08/2020 against the appellant,

according to which the appellant was awarded major punishment of dismissal from service.

(Attested Copy of Order dated 20/08/2020 is attached as Annexure "B")

5. That the appellant preferred an appeal to respondent No.2 and the respondent No.2/Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer, Kohat Region on 25/07/2023 dismissed the appeal on appellant.

(Attested Copy of Order dated 25/07/2023 is attached as Annexure "C")

6. That appellant feeling aggrieved with the above orders and finally the impugned order of The Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer, Kohat Region dated 30-12-2015 is now submitting this service appeal before this Hon'ble Court inter-alia on the following grounds.

GROUND:

- a. That the appellant is quite innocent and has brilliant track record in the police department during his whole service.
- b. That a case F.I.R No.829, dated 02/10/2020, U/s 298-A, P:S City Hangu was also registered against the same allegations i.e derogatory remarks in respect of holy personages by the same complainant, the trial was proceeded against the appellant before the Court of SCJ (judl) Judicial Magistrate Section 30 Crpc Hangu and at the end appellant was acquitted from the charges as mentioned above.
- Furthermore the acquittal of appellant from the same allegations/charges in the criminal case also proved the appellant innocent in the instant case, thus the Orders of Hon'ble D.P.O and D.I.G/RPO are liable to be set-aside and appellant has every right to be re-instated with all back benefits in the interest of Justice.
- (Attested Copy of F.I.R and Order & Judgment dt: 25/05/2022 is attached as Annex "D")*
- c. That it is well settled principle of law that "**one person cannot be punished twice for the same crime**" and in the criminal case F.I.R No.829 dated 02/10/2020 the appellant has gone through full fledged trial and has been declared innocent by acquitting from the same allegations for which the appellant has been removed from service in the present

case; hence appellant has been declared innocent through the Order and Judgment of competent Court of law, hence liable to be re-instated.

- d. That the impugned orders are not explanatory and non-speaking, which is bad in the eye of law.
- e. That appellant was not properly heard and even enquiry conducted by the E.O was biased and based upon religious hatred.
- f. That the alleged cases and the inquiry conducted against the appellant are based on malafide, malicious, biased and one sided process.
- g. That section 403 Cr.pc says, "Persons convicted or acquitted not to be tried for the same offence." And in the present case the appellant has been acquitted for the same allegations of derogatory remarks and removal of appellant from service amounts to be tried of the appellant for the same offence twice.
- h. That condonation of delay is also requested for filing the instant appeal and appellant is also submitted a separate application in this regard.
- i. That appellant belongs to a very poor family and now a days even not able to feed his family and really need this job by re-instating in the instant job.
- j. That during course of inquiry, no one deposes against appellant therefore the inquiry didn't provide chance of cross examination of the witnesses and the Hon'ble D.P.O Hangu has provided a harsh punishment, which is not justified and liable to be set-aside.
- k. That any other grounds will be raised at the time of arguments with kind permission of this Hon'ble Court.

It is therefore humbly requested that the appellant is innocent and the only earning male member of his family therefore the service appeal of appellant may kindly be accepted keeping in view the facts and grounds as given above,

(4)

the service of the appellant may kindly be restored/reinstated from the date of his dismissal with back benefits and salaries and the impugned order dated 25/07/2023 of The Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer, Kohat Region may also be declared null and void.

wj/hv

Through Appellant *[Signature]*

Mudasir Ali Bangash
Advocate
High Court Peshawar

03459183171

&

[Signature]
Abdul Qasim Ali Shah
Advocate Peshawar

Dated: 27/03/2024

5

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2024

Wajahat Hussain (Ex-Constable No.684) ----- Appellant

VERSUS

The Deputy Inspector General (D.I.G) Kohat and others-
----- Respondents

AFFIDAVIT

I, Wajahat Hussain S/o Sarwar Ali R/o Village Ibrahimzai Tehsil & District Hangu, solemnly affirm and declare on oath that the contents of the instant appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Court.

WJ Hussain

DEPONENT

Wajahat Hussain

CNIC # 14101-9643588-1

VERIFICATION

It is verified that no appeal is pending or has been preferred before this appeal to this Honorable Court.

WJ Hussain

DEPONENT

Wajahat Hussain S/o Sarwar Ali

CNIC # 14101-9643588-1

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2024

Wajahat Hussain (Ex-Constable No.684) ----- Appellant

VERSUS

The Deputy Inspector General (D.I.G) Kohat/ Regional Police Officer, Kohat
Region & another ----- Respondents

APPLICATION FOR CONDONATION OF DELAY

Respected Sir,

1. That the above titled condonation application is submitting by the appellant with the main appeal before this Hon'ble Court.
2. That appellant was not informed by the respondent No.2 about the Order against him, rather he was told that you will be informed in case of any decision.
3. That when appellant came to know about the Order dismissal Order against him, the appellant without any delay is filing the instant appeal. And the same was the case in the delay of filing of appeal before respondent No.2.
4. That the delay is not intentional but due to unavoidable circumstances.
5. That if the delay occurred has not been condoned then the petitioner would suffer an irreparable loss.
6. That great interest of appellant is involved in the instant case.

(5A)

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2024

Wajahat Hussain (Ex-Constable No.684) ----- Appellant.

VERSUS

Inspector General of Police (I.G.P) Khyber Pakhtunkhwa Peshawar and others-
----- Respondents

**-----
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Respected Sir,

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4. That the delay is not intentional but due to unavoidable circumstances.
5. That if the delay occurred has not been condoned then the petitioner would suffer an irreparable loss.
6. That great interest of appellant is involved in the instant case.

(5B)

It is therefore, respectfully prayed that on acceptance of this application the period of delay may graciously be condoned in the interest of justice.

Through Appellant
Mudasir Ali Bangash
Advocate
High Court Peshawar
03459183171

&

Abdul Qasim Ali Shah
Advocate Peshawar

Dated: 27/03/2024

AFFIDAVIT

I, Wajahat Hussain S/o Sarwar Ali R/o Village Ibrahimzai Tehsil & District Hangu, Peshawar, do hereby solemnly affirm and declare on oath that the contents of Instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from this August Court.

Wajahat Hussain

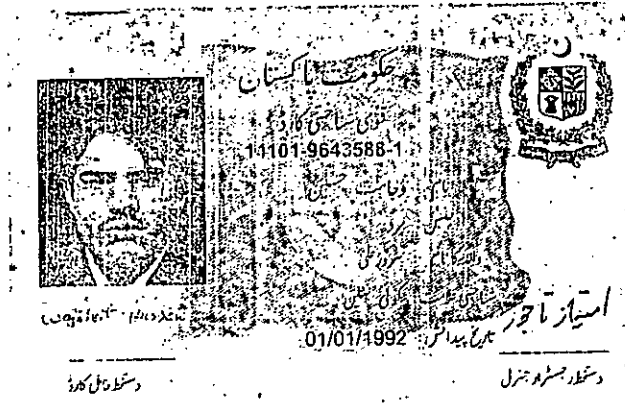
DEPONENT

Wajahat Hussain S/o Sarwar Ali

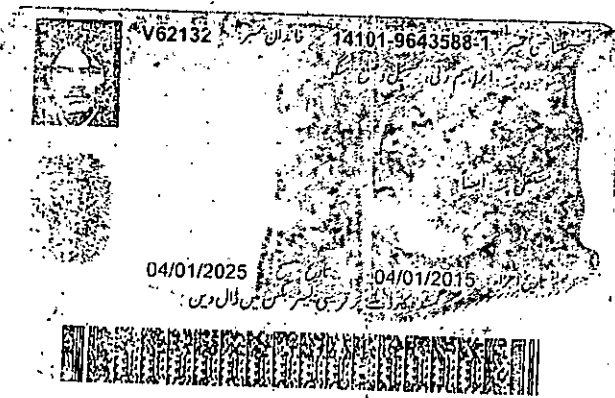
CNIC # 14101-9643588-1

06

Annex-A



Attested
 T. W. H.
 Mudassar Ali Baniqadi
 Adv. H.C. Pesh.



ORDER

Annex-B

7

This order of mine will dispose off the departmental enquiry against Constable Wajahat Hussain No. 684 on the basis of allegations that as per enclosed Facebook post sharing comments by him, Constable Wajahat Hussain No. 684 used un-parliamentary language against Syedena Ameer Muavia R.A by damaging the feelings of Sunni Sect District Hangu. As such, his attitude being a Police employee has badly affected the Sunni community as whole and Government machinery as well. His above act is against of a disciplined force and amount to gross misconduct on his part, which is liable to be severely dealt under Police Disciplinary Rules-1975 for major punishment.

Therefore, he was served with Charge Sheet & statements of allegations under Police Disciplinary Rules 1975 vide No. 32/EC, dated 06.05.2020 and Mr. Zahid ur Rehman Inspector Legal Hangu was appointed as enquiry officer into the matter. Moreover, the accused constable submitted his reply to the enquiry officer. During the course of enquiry he was examined by the enquiry officer and full opportunity of cross examination has been given to him. After completion of enquiry, the E.O held him guilty of the charge in his finding report to the effect that being a Police employee spreading sacrilegious and hateful material against Syedena Ameer Muavia R.A in a most sensitive district of the province famous for Shia- Sunni smashes badly damaged the feelings of whole Sunni community by the accused Police Constable Wajahat Hussain No. 684 therefore, recommended to be severely dealt by awarding him major punishment.


Thereafter, a Final Show Cause Notice was issued to him vide No. 101/EC, dated 08.05.2020 which was served on him through DPO Karak vide this office Memo: No. 5477/EC, dated 11.05.2020. As such his reply dated 17.05.2020 was found unsatisfactory showing lame excuses. Subsequently he was summoned by the undersigned to appear in Orderly Room, but he did not turn up nor submitted any reasonable response.

Keeping in view of above facts and having gone through available record, the undersigned has arrived at the conclusion that accused Constable Wajahat Hussain No. 684 being a member of disciplined force, had spread the sacrilegious and hateful material in most sensitive district of the province famous for sectarianism and past militancy which badly damages the feelings of entire Sunni community. Moreover, in such circumstances, his retention in Police Department is bad spot on disciplined force, therefore, I, Shahid Ahmed, District Police Officer, Hangu in exercise of the powers conferred upon me, awarded him major punishment of Dismissal from Service with immediate effect.

Order Announced

OB No. 196

Dated 20/08/2020

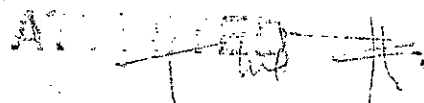

DISTRICT POLICE OFFICER,
HANGU

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 9093-96 /EC, dated Hangu, the 20/08/2020

1. Copy of above is submitted to the Regional Police Officer, Kohat Region, Kohat for favour of information please.
2. District Police Officer, Karak.
3. Pay Officer, SRC, Reader & OMC for necessary action.
4. Ex-Constable Wajahat Hussain No. 684.


DISTRICT POLICE OFFICER,
HANGU


Mudasir Ali Bangash
Adm. H.C. Pesh.

ORDER

Annex - C

8

This order will dispose of the departmental appeal preferred by Ex-Constable Wajahat Hussain No. 684 of district Hangu against the order of District Police Officer, Hangu whereby he was awarded major penalty of dismissal from service vide OB No. 196, dated 20.08.2020. Brief facts of the case are that the appellant shared derogatory comments on his Facebook ID against Hazrat Ameer Muavia (R.A) due to which the feelings of Sunni Sect of district Hangu were hurt. He was therefore, dealt with departmentally which culminated into major punishment of dismissal from service.

Proper departmental enquiry proceedings were initiated against him and Inspector Legal Hangu was nominated as Enquiry Officer. The Enquiry Officer after fulfillment of eodal formalities submitted his findings and the allegations leveled against the appellant were established. He was, therefore, recommended for major penalty under the relevant rules.

Keeping in view the recommendations of the Enquiry Officer and the above cited circumstances, the defaulter official was awarded major punishment of dismissal from service under the relevant rules by the District Police Officer, Hangu vide OB No. 196 dated 20.08.2020.

Feeling aggrieved from the order of District Police Officer, Hangu, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in the office of the undersigned on 18.07.2023. During personal hearing the appellant did not advance any plausible explanation in his defense, hence could not prove his innocence.

From the perusal of the enquiry file, service record of the appellant and the reasons advanced by Ex-Constable Wajahat Hussain No. 684 during personal hearing it is clear that the allegations leveled against the appellant are proved beyond any shadow of doubts.

Foregoing in view, I, Sher Akbar, PSP S.St, Regional Police Officer, Kohat, being the appellate authority, hereby reject the instant appeal being devoid of merits and badly time-barred.

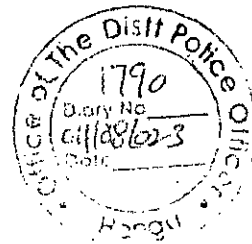
Order Announced
18.07.2023

Regional Police Officer,
Kohat Region

No. 2024 /EC, Dated Kohat the 21/7 /2023

Copy forwarded to District Police Officer, Hangu for information and necessary w/r to his office Memo: No. 2835/LB, dated 26.05.2023. His Service Record is returned herewith.

E.e
For nec action



DISTRICT POLICE OFFICER
HANGU 03/08/23

ATTESTED
Mundisir Ali Langar
Adm. H. C. Pasha

۱۴۱۵۱-۵۸۵۱۸۱۴۰۷ کارروائی قیامہ آئندہ درخواست حرفی محرف درج مانا ہو کر
اسن مارے میں مافاعزہ صحت بذریعہ امران مالا DPP صاحب تحریر کی گئی
حاصل کی جا سکی بعد رائے کے کارروائی حسب ضابطہ بنوئی نقلہ تعریف
کارروائی حسب ASP صاحب فرمان اللہ کو مارتے بنا حاکم ایہ نقلہ اصل
درخواست ہی حوالہ کی گئی ضامہ عالی

نقلہ طابق اصل سے

SHC/PS/475
02-10-020

~~ATTACHED~~

Mudassar Ali Banger
Asst. H. C. Pesh.

دستخط

عہدہ

اطلاع کے نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی مہر یا نشان لگایا جائے گا۔ اور اس پر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف یا ب سرخ روشنائی سے بالقابل نام پر
ایک لٹرم یا شہر علی الترتیب واسطے باشندگان علاقہ غیر یا وسط الشیاء یا افغانستان جہاں موزوں ہوں، لکھنا چاہئے۔

Qasim Ali

IN THE COURT OF SHAH FAISAL,
SCJ (JUDL)/JM SECTION 30 CR.PC, HANGU.

Case No. 14/2 of 2021

State VS Wajahat Hussain etc

SPP Syed Anwar Sadaat for the state present. Accused Wajahat Hussain

and Shabih ul Hassan on bail along with counsel present. Accused Aqeel Hussain

is absconding. Complainant also present. Statements of accused facing trial recorded u/s 342 CrPC, wherein neither the accused facing trial wished to be examined on Oath nor want to produce defense evidence. Arguments heard and record perused.

2- Vide my detailed judgment of today consisting of twelve (12) pages separately placed on file, this court is of the opinion that prosecution has not been able to bring home the charge against accused facing trial beyond reasonable doubt. Therefore, while extending the benefit of the doubt, accused Wajahat Hussain s/o Sarwar Ali r/o Ibrahimzai Tehsil and District Hangu and Shabih ul Hassan s/o Mohabbat Ali r/o Raisan Tehsil and District Hangu are acquitted from the charge leveled against them. Accused facing trial are on bail, hence, their sureties are absolved from the liabilities of their bail bonds.

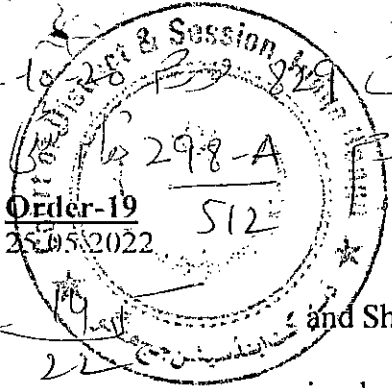
3- So, far case against the absconding co-accused Aqeel Hussain s/o Iswan r/o Ibrahimzai is concerned, from the evidence recorded by prosecution, the above-named absconding accused seems to be prima facie connected with the commission of offence. Hence, he is hereby declared as proclaimed offender. Perpetual warrant of arrest be issued against the above-named proclaimed offender/absconder. His name be entered in the relevant register of proclaimed offenders.

4- Case property if any be kept intact till the arrest and final trial of absconding accused

5- File be consigned to record room after its completion and compilation.

Announced
25.05.2022

(Shah Faisal)



(11)

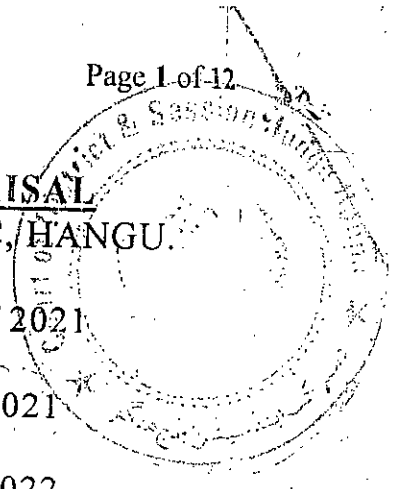
(11)

17/5/22
25.5.2022

12

IN THE COURT OF SHAH FAISAL
SCJ (JUDL)/JM SECTION 30 CR.P.C, HANGU.

Criminal Case No : 14/2 of 2021
 Date of Institution : 02.03.2021
 Date of Decision : 25.05.2022



27

State through Meer Rehman s/o Muhammad Aslam
 r/o Chamba Gul Hangu -----(Complainant)

V E R S U S

- 1- Wajahat Hussain s/o Sarwar Ali r/o Ibrahimzai
 Tehsil & District Hangu-----Accused facing trial)
- 2- Shabih-ul-Hassan s/o Mohabbat Ali r/o Raisan
 Tehsil & District Hangu---(Accused facing trial)
- 3- Aqeel Hussain s/o Iswan Ali r/o Ibrahimzai Tehsil
 & District Hangu----- (Absconding Accused)

CASE FIR No. 829

DATED: 02.10.2020

U/S: 298-A PPC

PS: CITY, HANGU.

J U D G M E N T:

Case of the prosecution, as per FIR, is that on 22/08/2020 at 09:20 hours, Meer Rehman s/o Muhammad Aslam r/o Chamba Gul Hangu came to the PS and submitted one written application against Wajahat Hussain Police Constable, Shabih ul Hassan Bangash and Aqeel Hussain for

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legal action wherein it was submitted that Wajahat Hussain who is police employee, Shabih ul Hassan Bangash and Aqeel Hussain have committed blasphemy in respect of Sahaba Kiram (R) particularly Syedona Ameer Muavia on social medial Facebook account. That Wajahat Hussain who is government servant, misused his power to strengthen the sectarian prejudice which falls into the category of terrorism due to which religious sentiments of people of the Hangu along with all Muslim community were effected which can cause sectarian problem. He requested for legal action against above stated person. On the application Naqal Mad No. 08 daily diary dated 22/08/2020 was chalked while after inquiry, the instant FIR was registered against above named accused.

2- Complete challan against accused facing trial while challan u/s 512 Cr.P.C against absconding accused were submitted through prosecution for trial on 02-03-2021. Accused facing trial were summoned. Accused facing trial Wajahat Hussain and Shabih ul Hassan appeared before the court on 05-04-2021 and copies were delivered under section 241-A Cr.P.C. Accused facing trial were formally charge sheeted on 17-04-2021, wherein they did not plead guilty rather claimed trial. Accused Aqeel Hussain was reportedly absconding therefore, Shah Nawaz DFC was summoned, who

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appeared before the court on 17/04/2021 and his statement was recorded as SW-1. In the light of the statement of SW-1, Accused Aqeel Hussain was proceeded against U/S 512 Cr.P.C and prosecution was allowed to lead its evidence in his absentia. Prosecution examined six (05) witnesses in support of its stance.

3- PW-01 is **Sher Zaman, ASI PS City, Hangu** who deposed that during the relevant days he was posted as in operational staff. On 02.10.2020 Moharrir of PS City, handed over F.I.R, Naqalmad, application of complainant, application for legal opinion alongwith other documents to him. On the direction of SHO, he traced out the father name in residence of accused. On 04.10.2020 he made house search of accused Wajahat Hussain & Aqeel Hassan at Ibrahimzai and prepared search memo which is Ex.PW1/1. Similarly, he also made the house search of the accused Shabih ul Hassan at Raisan and prepared search memo Ex.PW1/2. On 05.10.2020 accused Wajahat Hussain produced BBA documents issued by Hon'ble court in the PS so, he issued his card of arrest which is Ex.PW1/3. On 06.10.2020 on the direction of DPO Hangu, he handed over the case file to Inspector Abdur Rehman. He perused all the relevant documents which are correct and correctly bears his signatures.

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4- PW-2 is **Jahangir Khan, SI PS City, Hangu**, who deposed that during the relevant days he was posted as additional SHO City, Hangu. On 15.10.2020, BBA of accused **Wajahat Hussain & Shabih Ul Hassan** was rejected from ASJ-II Hangu. He arrested the above mention accused and handed over to the Moharrir of PS City, Hangu. He cursory interrogated the accused who admitted their guilt before him. On 16.10.2020, he produced accused **Wajahat Hussain & Shabih Ul Hassan** for recording their confessional statement through his application which is Ex.PW- 2/1, but they decline to record their confessional statements before the court and accused were granted bail. He recorded the statements of accused facing trial u/s 161 Cr.P.C. He perused all the relevant documents which are correct and correctly bears his signatures.

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3- PW-3 is **Inspector Abd-ur-Rehman, Traffic and complaint District Karak** who deposed that during the relevant days he was posted as OII in PS Thall, District Hangu. On the direction of DPO, the investigation of instant case was handed over to him. On receipt of all the relevant documents from his predecessor. He applied for CDR data and provision of CNICs Numbers and Mobile numbers of the accused. On 13.10.2020, he recorded the statements of Hazrat

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Umar s/o Shah Aman and Mudasir Hussain s/o Farid Ullah u/s 161 Cr.P.C. accused Aqeel Hussain and Accused Shabih UI Hassan were avoiding their lawful arrest, in this respect he applied to the court of learned Judicial Magistrate for issuing warrant of arrest u/s 204 Cr.P.C vide his application Ex.PW-3/1. Accused Shabih UI Hassan applied for BBA and he brought certificate regarding ad-interim prior as bail was granted to him. The accused Shabih UI Hasssan was considered arrest in the instant case and issued his card of arrest Ex.PW-3/2. He placed on file NADRA record of family of Shabih UI Hassan which is Ex.PW-3/3. Thereafter he was transferred to District Karak and investigation of instant case was handed over to Jahangir Khan SI. He perused the relevant documents which are correct and correctly bear his signatures.

6- PW-04 is Mir Rehman, (complainant) who deposed that on 22.08.2020 he went to PS city Hangu and handed over an application for conducting inquiry against accused Wajahat Hussain, Shabih UI Hassan accused facing trial and accused Aqeel Hussain absconding. Accused Wajahat Hussain committed blasphemy in the name of Hazrat Ameer Mahaviya on his Facebook account while accused Aqeel Hussain and Shabih UI Hassan have commented on their Facebook that they are with him and fully supported him. Further Shabih UI

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Hassan also committed blasphemy in the name of Khulfai Rashedeen. Wajahat Hussain is a serving police officer and he is misusing his power. SHO satisfied them that he will sent the case to Cyber Crime and FIA D.I Khan. He perused his application on the file which is correct and is Ex.PW-4/1. They all the Sunni sect protest, day after FIR was registered against the accused. He charged the accused for commission of offence.

7- PW-05 is Hazrat Umar, who deposed that on 13.10.2020, Wajahat Hussain who is listed as friend with him on Facebook account. In account he wrote disrespectful and committed blasphemy in respect of Hazrat Mahaviya in his comments and this disrespected comment were re-affirmed by accused Shabih Ul Hassan. In this respect police recorded his statement u/s 161 Cr.P.C. He has also handed over screen shots of Facebook accounts and comments which are placed on file (POF-A) (consisting of 04 sheets). He charged the accused for commission of offence because these acts inflame sectarian division between the sects.

8- After conclusion of prosecution evidence, accused were examined under section 342 Cr.P.C, wherein they denied all the allegations leveled against them. Neither they wished to be

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examined on Oath nor did they opt to produce any defense evidence.

9- Arguments heard; case file gone through.

10- Learned SPP for the state argued that accused are directly charged in the report of complainant. He further contended that the material available on the file prima-facie connects all the accused with the commission of the offence and PWs have fully supported the case of the prosecution. He requested for the conviction of the accused.

11- Conversely, learned counsel for the accused contended that the accused are innocent and have falsely been implicated in the instant case. He further submitted that the statements of PWs are full of contradictions and does not support the version of the prosecution. He also submitted that charge against the accused is baseless and there is no probability of their conviction. He requested for acquittal of the accused.

12- Perusal of record reveals that the accused facing trial have been charged for the commission of offence under section 298-A PPC. In order to establish guilt of the accused, prosecution has to prove its case, beyond any shadow of doubt but the case in hand is full of dents and doubts. Record transpires that complainant charge the accused facing trial for blasphemy in respect of Khulafaye Rashideen. Complainant

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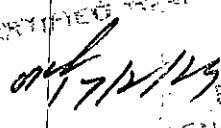
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recorded his statement as PW-4, wherein he narrated the same facts as mentioned in his application while Hazrat Umar recorded his statement as PW-5 who deposed that on 13.10.2020 Wajahat Hussain who is listed as friend with him on Facebook account and in account he wrote disrespectful and committed blasphemy in respect of Hazrat Muavia in his comments and this comments were reaffirmed by accused Shabih ul Hassan. In this respect the local police recorded his statement u/s 161 CrPC and he had also handed over screen shots of Facebook accounts and comments which are placed on file. Complainant during cross-examination himself admitted that the application Ex. PW-4/1 does not bear his signature/thumb impression and also does not bear date, month and year. The complainant further admitted that he had not given any screen shot along with application to SHO while PW-5 Hazrat Umar during his cross-examination admitted that he also accompanied the complainant at the time of handing over of application in the PS City Hangu and he handed over the screen shots twice to local police. First at the time of submission of application and secondly at the time of recording the statements. The complainant PW-4 also admitted that none of the accused is listed as friend with him on Facebook account. He further admitted that in the

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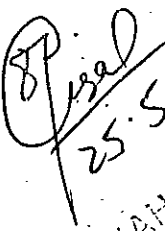
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application Ex. PW-4/1 no specific attribution of act is mentioned there, as stated by him in his court statement meaning thereby that the complainant made improvement in his court statement. PW-5 Hazrat Umar during cross-examination also admitted that he had not stated in his statement recorded u/s 161 Cr.PC that Wajahat Hussain is friend with him on his Facebook account and similarly he had not handed over any documents/proof which could prove that the accused facing trial is friend with him on his Facebook account. PW-3 Inspector Abd-ur-Rehman during cross-examination also admitted that he applied for CDR Data of accused but he did not procure CDR data during his investigation. He also admitted that he did not investigate that whether PW Hazrat Umer and Mudasir are connected as friend in Facebook and similarly he did not investigate the matter regarding connecting of complainant Mir Rehman with accused facing trial as a friend in Facebook. Said PW also admitted that he himself did not investigate that whether SIM NO. 03339673746 of complainant is on his name or not and similarly, whether the SIM No. 02328816181, 03306345606 and 03348305839 are on the name of accused facing trial or not. PW-1 Sher Zaman ASI during cross-examination also admitted that he had not recovered any incriminating

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article/mobile from the house of accused and similarly, the accused has neither made any confession nor any mobile set or SIM were recovered from accused facing trial as stated by Jehangir Khan SI during his cross-examination.

13- So, keeping in view the above it is held that there are major contradictions in the statement of the PWs which creates a reasonable doubts and the benefit of the doubt would go to the accused as it has been held by his Lordship in his Worthy judgment, reported in **PLD, 2003 Peshawar, 84**. Relevant Para is reproduced is as under:

a) Criminal Trial:

---Benefit of doubt--- For the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required a single infirmity creating reasonable doubt in the mind of a reasonable and prudent person regarding the truth of the charge makes the whole case doubtful.

Further, it has been held by his Lordship in his Worthy judgment, reported in **PCrLJ, 2004 Peshawar, 92**. Relevant Para is reproduced is as under:

1. Criminal Trial:-

---Benefit of doubt--- Prosecution preliminary was bound to establish guilt against accused, without shadow of reasonable doubt by producing trust worthy, convicting and coherent evidence enabling the court to draw conclusion

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whether prosecution had succeeded in establishing accusation against accused or not---if the court had come to the conclusion that the charges against the accused had not been proved beyond reasonable doubt, then accused would become entitled for his release on benefit of doubt in prosecution case.

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14- For what has been discussed above, this court is of the opinion that prosecution has not been able to bring home the charge against the accused facing trial beyond reasonable doubt. Therefore, while extending benefit of the doubt, accused facing trial Wajahat Hussain s/o Sarwar Ali r/o Ibrahimzai Tehsil and District Hangu and Shabih ul Hassan s/o Mohabbat Ali r/o Raisan Tehsil and District Hangu are acquitted from the charge leveled against them. Accused facing trial are on bail, hence, their sureties are absolved from the liabilities of their bail bonds.

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15- So, far case against the absconding co-accused Aqeel Hussain s/o Iswan r/o Ibrahimzai is concerned, from the evidence recorded by prosecution, the above-named absconding accused seems to be prima facie connected with the commission of offence. Hence, he is hereby declared as proclaimed offender. Perpetual warrant of arrest be issued against the above-named proclaimed offender/absconder. His

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name be entered in the relevant register of proclaimed offenders.

16- Case property if any be kept intact till the arrest and final trial of absconding accused.

17- File be consigned to record room after its necessary completion and complication.

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Announced:
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SHAH FAISAL 27.5.22
SCJ (Judl)/JM Section 30 Cr.PC,
Hangu.




CERTIFICATE

Certified that the judgment consists of Twelve (12) pages, each page has been signed by me after making necessary correction, therein.

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قیمت 50 روپے	25230	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ:	بار کونسل ایسوسی ایشن نمبر: BC-10-3143	PESHAWAR BAR ASSOCIATION
رابطہ نمبر:	03459183171	  

بعدالت جناب: سروس ٹریبیونل کشاور

مخانب: / Appellant: وجاہت حسین	دعویٰ: سروس اپیل
وجاہت حسین بنام	علت نمبر:
آئی جی۔ پی کے پی کشاور	مورخہ:
	جرم:
	تھانہ:

بامث تحریر آئکہ

(Appellant)

وجاہت حسین ولد سروس علی

CNIC # 14101-9643588-1

Ujhaat Hussain

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ مقام آن مقام کشاور کیلئے صدر علی بنڈیش / ایڈوکیٹ صائی ٹورٹ کشاور کو وکیل مقرر (ایڈووکیٹ) کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثت و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست ازہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برائگی اور منسوخی، نیز دائر کرنے اپیل گزرائی و نظر ثانی و پیروی کرنے کا اختیار 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 اہل کاساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیش مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے

Abdul Qasim Ali Shah
Adv. Peshawar

المقام لکشاور
Attested & Accepted
Mudasir Ali Bangash
Adv. H.c Pesh.

المقام لکشاور کے لئے منظور ہے۔

Attested & Accepted
Mudasir Ali Bangash
Adv. H.c Pesh.