

BEFORE THE KPK SERVICE TRIBUNAL
PESHAWAR

CAM No. _____/2024

In

Appeal No. 1311/2023

Muhammad Adnan

VERSUS

Govt. of KPK etc.

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Dated: 05.10.2024

Your Humble Petitioner,
Through Counsel


GUL TIAZ KHAN MARWAT,
Advocate High Court, D.I.Khan

BEFORE THE KPK SERVICE TRIBUNAL

PESHAWAR

CMA No. _____/2024

In

Appeal No. 1311/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16361

Dated 07-10-2024

Muhammad Adnan

VERSUS

Govt. of KPK etc.

APPLICATION FOR BRINGING ON RECORD OF THIS HONOURABLE TRIBUNAL COPIES OF JUDGMENT DATED 23.05.2024 PASSED IN CR.M.Q NO. 5-D/2024 TITLED AS "MUHAMMAD ADNAN V/S THE STATE "VIDE WHICH CRIMINAL CASE FIR NO. 852 DATED 09.07.2020 U/S 419/420/468/471 PPC P.S. CANTT: D.I.KHAN HAS BEEN QUASHED.

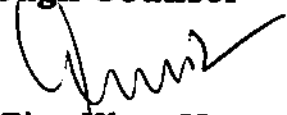
Respected Sir,

1. That the above noted Appeal is pending disposal before this Honorable Tribunal.
2. That the subject cited criminal case was registered against the appellant illegally and thereafter challan was submitted in the Trial Court which was pending in the Court of learned Judicial Magistrate-II D.I.Khan against which the appellant filed a petition for quashment for proceeding which came up for hearing before the honourable High Court on 23.05.2024 which was accepted and the in the proceedings including the impugned FIR has been quashed. Copy of judgment is enclosed as **Annexure - A**.
3. That the subject cited copy of judgment of honourable High Court is necessary essential/ material to be brought on record of this learned Tribunal.

It is therefore humbly prayed that on acceptance this application, the subject cited copy of judgment of High Court may please be ordered to be place on record of this honourable Tribunal in the interest of Justice.

Dated: 05.10.2024

Your humble Petitioner
Through Counsel


Gul Tiaz Khan Marwat
Advocate High Court
D.I.Khan

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BEFORE THE KPK SERVICE TRIBUNAL
PESHAWAR

CAM No. _____/2024

In

Appeal No. 1311/2023

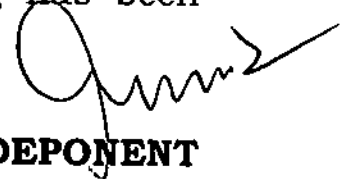
Muhammad Adnan

VERSUS

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AFFIDAVIT

I, Gul Tiaz Khan Marwat Advocate High Court Counsel for Petitioner, do hereby solemnly affirm on oath that all the contents of the petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.



DEPONENT



I A

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BEFORE THE PESHAWAR HIGH COURT
D.I.KHAN BANCH

FILED TODAY
15 MAY 2024
Additional Registrar

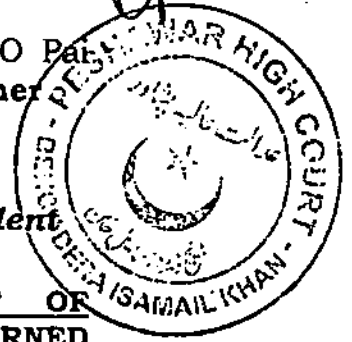
Cr. M.Q No. _____ 2024

Muhammad Adnan S/O Mumtaz Khan Caste Kundi R/O Peshawar
Tehsil & District TankPetitioner

VERSUS

The State.

.....Respondent



PETITION U/S 561-A CR. PC FOR QUASHMENT OF ORDER/JUDGMENT DATED 28.02.2024 PASSED BY LEARNED ADDITIONAL SESSIONS JUDGE-III DERA ISMAIL KHAN IN CRIMINAL REVISION NO. 39 of 2023 VIDE WHICH REVISION PETITION OF PETITIONER AGAINST THE IMPUGNED ORDER DATED 28.10.2023 OF LEARNED JUDICIAL MAGISTRATE-II/ SENIOR CIVIL JUDGE (ADMN) D.I.KHAN OF REJECTION OF APPLICATION U/S 249-A CR. P.C HAS BEEN DISMISSED IN CASE FIR NO. 852 DATED 09.07.2020 U/S 419/420/468/471 PPC P.S. CANTT: D.I.KHAN.

Respectfully Sheweth,

1. That the petitioner is a citizen of the country and being a citizen has the rights and obligation under the constitution as well as under the law of the land.
2. That the Petitioner was taken in to custody by the Learned Judicial Magistrate-I D.I.Khan on the allegation that the petitioner has committed an offence of forgery where after letter No. 287 dated 09.07.2020 was drafted by the Learned Magistrate-I D.I.Khan and the same was sent to SHO P.S Cantt D.I.Khan for registration of FIR and in compliance with the aforesaid letter the subject cited FIR was registered by the local police of P.S Cantt D.I.Khan. Copies of letter and FIR are enclosed as Annexure - A & B respectively.
3. That after completion of investigation complete challan

Ground

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Dera Ismail Khan

Cr.MQ 05-D 2024 (Grounds)

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

Cr.MO.No.05-D/2024 with
Cr.Misc.No.06-D/2024.

Muhammad Adnan

Versus

The State



JUDGMENT

For petitioner: Mr. Gul Tiaz Khan Marwat,
Advocate.

For State: Mr. Ghulam Muhammad Sappal,
Addl. A.G.

Date of hearing: 23.5.2024.

Dr. Khurshid Iqbal, J.-

1. In certain criminal proceedings, two men Abdul Waheed and Barkatullah appeared as sureties for one Muhammad Luqman, before a Judicial Magistrate in Dera Ismail Khan's district courts. The Judicial Magistrate suspected the identity of Abdul Waheed. When asked, it was found that the man was Muhammad Adnan (petitioner), not Abdul Waheed. Interestingly, it was also discovered that he is a constable in the Frontier Reserve Police. The Judicial Magistrate wrote a complaint (apparently under section 195, Cr.P.C.) to the SHO of Cantonment Police Station, directing what he termed as "doing the needful in accordance with law against both" Abdul Waheed and the petitioner. He also sent copies of his complaint to the Sessions Judge and the District Police Officer. The same day, the District Public Prosecutor wrote an

Amir

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opinion that a criminal case on the strength of FIR be registered against the above referred two persons under section 419, 420, 468, and 471, PPC. Pursuant to the aforesaid opinion, the SHO registered the present case bearing FIR #.852 as a complainant.

2. The petitioner moved an application under section 249-A, Cr.P.C. seeking his acquittal on the grounds that he is a law abiding citizen, but involved by the Naib Court of the trial court on personal grudges; the prosecution was failing to bring evidence against him; and he can't afford the agonies of the criminal proceedings because his wife is a mentally ill person, which aspect, he said, may be considered as a compassionate ground for his acquittal.

Wahid

3. The Senior Civil Judge dismissed the petitioner's application on 28.10.2023. The main ground of dismissal stated was that recording of evidence was necessary. The dismissal order reflects a background in such a way that on commencement of the trial, the petitioner and the co-accused had pleaded guilty on which they were convicted and sentenced to suffer imprisonment for one year. They were released on probation, being first offenders. On appeal, the conviction order was set aside and fresh trial ordered.

4. The order of 28.10.2023 was challenged in a revision petition under sections 435/439-A, Cr.P.C. which was dismissed by a judgment rendered on 28.02.2024. The learned Additional Sessions Judge offered reasoning in para 3 (mistakenly numbered as 6). A close but critical reading of the aforesaid para would show that while the law empowers a trial court under 249-A/265-K, Cr.P.C. to acquit an accused at any stage, each case is to be appraised on its own

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particular facts and circumstances. Just for the sake of appreciation, it seems worth observing that the legal aspect was applied to the facts, circumstances and background of the proceedings delineated in detail in the earlier paras of the judgment.

B

5. The petitioner assailed the order dated 28.10.2023 and the judgment dated 28.02.2024 in the instant petition under section 561-A, Cr.P.C.

6. Arguments of Mr. Gultiaz Khan Marwat, learned counsel for the petitioner, and Mr. Ghulam Muhammad Sappal, learned Additional Advocate General, were heard at length, the record perused.

7. In the instant petition as well as in the revision petition before the learned Additional Sessions Judge, the key ground set is/was that the entire proceedings were in violation of the procedure laid down in section 195, Cr.P.C. Though the initial complaint of the Judicial Magistrate, as stated in para 01, above, apparently looked to be under section 195, Cr.P.C., the intrinsic error committed was that it was addressed to the police. The word "complaint" used in that section doesn't mean or even include FIR. The word "complaint" has been defined in section 4(h), Cr.P.C., is crystal clear in its expression. It reads as:

Mudkipal

(h) "Complaint": Complaint means the allegation made orally or in writing to a Magistrate, with a view to his taking action, under this Code that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer.

The law laid down in section 195, Cr.P.C. doesn't provide that a complaint shall be sent to the police. Then, the Judicial Magistrate wrongly wrote in his complaint that the SHO shall "do the needful in accordance with law." This indicates that he didn't

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apply his judicial mind to find out what offence, if at all, was committed before him. In fact, the offence committed before him is defined and punishable under section 205, PPC. For ease of reference, its text is reproduced below:

205. False personation for purpose of act or proceeding in suit or prosecution: Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

8. The District Public Prosecutor, I must say with utmost respect, badly failed to take some pain and see which offence was committed. Like the Judicial Magistrate, he, too, in a slipshod manner dealt with the matter generically rather than meaningfully. Another glaring error he committed was that his opinion is he gave no reason worth the name. Indeed, he should have noted that he had formed his opinion after having gone through the relevant provisions of the PPC and the Cr.P.C. This court is compelled to observe that had he gone through the relevant provisions, he would have surely been able to offer a correct opinion. It was this oblique foundation he laid down on which the edifice of the entire proceedings was wrongly and illegally erected. It is no less important to observe that none of our judicial officers, too, find any opportunity to search for a lighthouse in the troubled water.

Widder

9. It is, therefore, imperative to state the correct legal position here. To reiterate, the act of the petitioner fell within the mischief of section 205, PPC. The complaint procedure for that and many other offences is enunciated in clause 'b' of section 195, Cr.P.C. For easy and quick, section 195 may be read here:

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195. Prosecution for contempt of lawful authority of public servants. Prosecution for certain offence against public justice. Prosecution for certain offences relating to documents given in evidence. (1) No Court shall take cognizance:--

- (a) of any offence punishable under Sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;
- (b) of any offence punishable under any of the following sections of the same Code, namely, Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or
- (c) of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

Murphy

10. Next, the provision further provides that the complaining officer presiding over the judicial proceedings shall either him/herself try the accused for the offence committed or forward the complaint to another/senior judicial officer. Finally, the nature of the trial provided in section 476, Cr.P.C. is summary trial which procedure is available in Chapter XXII, Cr.P.C. Again, for ready reference, the said provision is reproduced below:

476. Procedure in cases mentioned in Section 195: (1) When any offence referred to in Section 195, sub-section (1), clause (b) or clause (c), has been committed in or in relation to a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII.

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(2) When in any case tried under sub-section (1) the Court finds the offender guilty, it may, notwithstanding anything contained in sub-section (2) of Section 262--

(a) pass any sentence on the offender authorised by law for such offence, except sentence of death, or imprisonment for life, or imprisonment exceeding five years, if such Court be a High Court, a Court of Session, a District Court or any Court exercising the power of a Court of Session or a District Court;

(b) sentence the offender to simple imprisonment for a term which may extend to three months, or to pay a fine not exceeding one thousand rupees, or both, if such Court be a Court of a Magistrate of the First Class, a Civil Court other than a High Court, a District Court or a Court exercising the powers of a District Court, or a Revenue Court no inferior to Court of Collector;

(c) sentence the offender to simple imprisonment for a term not exceeding one month, or to pay a fine not exceeding fifty rupees, or both, if such Court be a Criminal Court or a Revenue Court other than a Court referred to in clause (a) or clause (b).

Wadhwa

(3) The powers conferred on Civil, Revenue and Criminal Courts under this section may be exercised in respect of any offence referred to in sub-section (1) and alleged to have been committed in relation to any proceeding in such Court by the Court to which such former Court is subordinate within the meaning of sub-section (3) of Section 119.

(4) Any person sentenced by any Court under this section may, notwithstanding anything hereinbefore contained; appeal—

(a) in the case of a sentence by the, High Court, to the Supreme Court.

(b) in the case of a, sentence by a Court of Session, or District Courts of a Court, exercising the powers of a Court of Session or a District Court, to the High Court; and

(c) in any other case, to the Sessions Judge.

(5) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this

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section and the Appellate Court may alter the finding or reduce or enhance the sentence appealed against.

11. There is a good deal of the case law on the subject. Reference may be made to the following cases:

Abdul Hakeem v. The State (1994 SCMR 1103) [Supreme Court of Pakistan].

Muhammad Tanvir Khan Kundi and 4 others v. Ashraf Khan and 3 others (2014 MLD 1645) [Peshawar High Court]

Syed Jawaid Haider Kazmi v. The State and another (PLD 2020 Sindh 719).

Qaiser Khan and another v. District and Sessions Judge, Sanghar and 2 others (2011 YLR 1010) [Karachi]

M. Sharif v. S.H.O. and others (2012 MLD 114) [Lahore]

Muhammadullah v. The State (2014 YLR 964) [Peshawar High Court]

12. In the case of Abdul Hakeem, during judicial proceedings in a criminal case before the High Court, the appellants submitted a death certificate issued by the Union Council. The certificate was, later on, found to be a forged one. On an application, the complainant of the case submitted, the High Court proceeded under section 476, Cr.P.C., and framed the charge against the appellant u/s. 193, PPC. The supreme court granted leave to consider whether under clause (b) of section 195, Cr.P.C., the High Court should have made a complaint u/s. 193, PPC to the competent court for trial instead of ordering to conduct the trial itself. The court observed:

W/110

As clause (b) inter alia refers to sections 193, 194 and 195, P.P.C., cognizance of offence under these provisions can be taken on a complaint in writing by the Court in which the offence has been committed. However, section 195, Cr.P.C. has to be read with 'section 476, Cr.P.C., which provides procedure in cases mentioned in section 195 (1) (b) (c), Cr.P.C. Every civil, criminal or revenue Court is empowered and has the discretion to take cognizance of the offence referred in section 195 (1) (b) or (c), which has been committed in or in relation to a proceeding before it and try the same in accordance with the

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procedure prescribed for summary trial in Chapter XXII, Cr.P.C.

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The court further held:

Section 476, Cr.P.C, thus provides a procedure other than the one mentioned in section 195, Cr.P.C., and authorizes the Court to try the case itself. We approve the view expressed in *Sher Adat Khan and another v. Sahib Din and 2 others* (1989 PCr.L1 1299). The above interpretation of section 476, Cr.P.C, finds support from section 476-A, C.P.C., which empowers the Court that in case it considers that the accused should not be tried under section 476(1), Cr.P.C., then the Court may, after recording the facts constituting the offence and the statement of the accused person, forward the case to a Court having jurisdiction to try it. Therefore, during the trial before the Court under section 476(1) the accused will have a chance to point out that it is not a fit case for trial by the Court summarily and it will be within the discretion of the Court to accept the plea or to reject it.

13. In the case of Muhammad Tanveer Kindi and 04 others v. Ashraf Khan and 3 others, an Additional Assistant Commissioner, on a complaint u/s.188, 148 and 149, PPC, pertaining to violation of certain restraining order, forwarded the same to the SHO of the Police Station concerned for registration of the case. It was held that being a public servant a complaint in writing u/s.195, Cr.P.C., should have been made by the Additional Assistant Commissioner and not by the complainant, who was neither a public servant nor a subordinate to a public servant.

W/11/180

14. Syed Javid Haider Kazmi involved a similar question. In this case, during criminal proceedings an application u/s.249-A, Cr.P.C., was moved before a Magistrate. The application was dismissed. The dismissal was challenged in appeal, which was allowed and the applicant was acquitted. It was discovered that before the acquittal order, an application u/s.193, PPC, was moved against the applicant for fabricating false evidence. The Court held that a private person could

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not move a complaint u/s.193, PPC. The Court dilated upon the subject with reference to the case of Patal Lalji Bhai v. State of Gujrat (AIR 1971 SC 1934).

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15. The question in the case of Oaisar Khan and another was that regarding an incident of giving false evidence in judicial proceedings, a Sessions Judge directed the SHO of the concerned Police Station to register a case u/s.193, PPC. The Court ruled that u/s.195, Cr.P.C, a complainant u/s.193, PPC, is required to be made by the Court in writing before whom such offence has been committed, to the Court subordinate to such Court.

16. It was held in M.Sharif v. S.H.O. and others, that despite the fact that the offence u/s.188, PPC, has been declared as cognizable, the fact would remain that a complaint u/s.195, Cr.P.C., is to be made by the public servant and that no FIR could be lodged on the complaint of a private person. In this case, the Court quashed the FIR.

Muhammad

17. In the case of Muhammadullah v. the State, with reference to Amanullah and 4 others v. The State (1984 PCr.P.L 2798) and Shereen v. The State (2020 PCr.LJ 1427) [Peshawar], the court ruled that making of a complaint in writing by the Judicial Officer, being public servant u/s.195(b), Cr.P.C, was necessary for prosecution of the offence u/s.193, PPC.

18. We would now advert to the law relating to quashment. There is a dominant judicial view that the High Court would normally restrain from quashing a criminal case exercising its powers u/s. 561-A, Cr.P.C read with Art. 199 of the Constitution. However, where

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no other adequate remedy is available to an aggrieved person, it may exercise such powers. Reliance is placed on the case Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others, (2011 SCMR 1813) [Supreme Court of Pakistan], in which, the order of quashment passed by the High Court was set aside, certain guidelines were laid down which are as follows:

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High Court will have to consider in each case the following test to be applied to determine the adequacy of the relief:--

- (i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternate remedy is not an 'other adequate remedy' within the meaning of Article 199.
- (ii) If the relief available through the alternate remedy, in its nature and extent, is what is necessary to give the requisite relief, the "adequacy" of the alternate remedy must further be judged with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternate remedy with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison, those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.

Wahid

- (iii) In practice the following steps may be taken:
 - (a) Formulate the grievance in the given case as a generalized category;
 - (b) Formulate the relief that is necessary to redress that category of grievance;
 - (c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;
 - (d) If such a remedy is prescribed, the law contemplates that resort must be have to that remedy;
 - (e) If it appears that the machinery established for the purpose of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the

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power of the court that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy and the organ that takes over will break down under the strain;

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- (f) If there is no other remedy that can redress that category of grievance in that way and to the required extent or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralize or defeat it so as to deprive it of its substance, the court should give the requisite relief under Article 199.
- (g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance is not adequate to the relief that is essential in the very special category to which that belongs, the court should give the required relief under Article 199.

19. In view of the above stated position, this petition is allowed, and the FIR No.852, dated 09.7.2020, u/ss. 419/420/468/471, PPC, registered at Police Station Cantt, D.I.Khan, and all other proceedings are quashed. The Judicial Magistrate concerned, however, may initiate fresh proceedings according to law.

Announced
Dr: 23.5.2024.
Imran

W. H. Q.
JUDGE

Office
07/06/2024

(S.B)
Hon'ble Mr. Justice Dr. Khurshid Iqbal

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Handwritten marks

G.R.No. 2203
Application Made on 12-06-24
Copying Fee 162
No of Papers 162
Copying Fee 04/5
Urgent Fee _____
Total Fee _____
Copy ready for delivery 12-06-24
Copy delivered on 12-06-24
Signature of Examiner [Signature]

Certified to be true copy

[Signature] 12/6/24

EXAMINER
Peshawar High Court Bench D I Khan
Authorized under Section 97 of
Qanoon-e-Shahadaat 1919