


FORM OF ORDER SHEET

Court of _____

Review Petition No. 1369/2024

No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12/11/2024	<p>The Review Petition in appeal no. 3427/2021 submitted today by Syed Noman Ali Bukhari Advocate. It is fixed for hearing before Division Bench at Peshawar on 19.11.2024. Original file be requisitioned. Parcha Peshi is given to the counsel for the petitioner.</p> <p style="text-align: right;">By the order of Chairman</p> <div style="text-align: right;">  REGISTRAR </div>

The review petition of Mr. Sjjad Ahmad, submitted today on 31.10.2024 by Syed Noman Ali Bukhari, Advocate, is incomplete for the following reasons and is being returned to the counsel for the petitioner for completion and resubmission within 15 days:

1. An attested copy of the judgment is not attached to the petition.
2. The review petition is filed under Section 7-A of the Khyber Pakhtunkhwa Service Tribunal Act, 1974; however the Act does not contain for 7-A. If such a provision exists, attach the authentic copy of the same with the petition.
3. The annexures to the petition are unattested.

No. 10/0 /Inst./2024/KPST,

Dt. 31/10 /2024.

Amatullof
ADDITIONAL REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bukharin Adv.,
High Court Peshawar.

Siv

*all objections (1 to 3) were removed & re-submitted
again.*

12
12-11-2024

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

REVIEW PETITION NO: 1369 /2024

IN

APPEAL NO.3427/2021

Sajjad Ahmad

V/S

Police Deptt

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-4
2.	Copy of FIR	A	05
3.	copy of Inquiry report	B	06
4.	Copy of Dismissal order	C	07
5.	Copy of appellate order	D	08
6.	Copy of II-A appeal	E	09
7.	Copy of Appellate impugned order	F	10-11
8.	Copy of impugned tribunal Judgment	G	12-15
9.	Copy of judgment	H	16-19
10.	vakalatnama	---	20

Sajjad Ahmad
PETITIONER
Sajjad Ahmad

THROUGH:

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
(ADVOCATE, HIGH COURT)

Uzma Syed
&
UZMA SYED
ADVOCATE PESHAWAR.

Cell No: 0306-5109438

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

REVIEW PETITION NO: 1369 /2024

IN

APPEAL NO.3427/2021

Sajjad Ahmad ASI No: 1327
Police Lines District Nowshera.

(Petitioner)

VERSUS

1. The Addl: IGP/HQrs For Inspector general of Police, KP, Peshawar.
2. The District Police Officer Mardan.
3. The Regional Police officer Mardan.

(Respondents)

REVIEW PETITION UNDER SECTION 7-A KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL, ACT, 1974
WITH ALL ENABLING LAWS FOR REVIEWING
THE JUDGMENT DATED 02/10/2024 IN SERVICE
APPEAL NO: 3427/2021.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS REVIEW PETITION,
THAT THE JUDGMENT PASSED IN SERVICE APPEAL NO
3427/2021 MAY BE REVIEWED BY RESTORING THE
SERVICE APPEAL AND THE SAME MAY BE DECIDED IN
ON MERITS IN INTEREST OF JUSTICE. ANY OTHER
REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT
AND APPROPRIATE THAT MAY ALSO BE AWARDED IN
FAVOUR OF THE PETITIONER.

RESPECTFULLY SHEWETH:

FACTS:

1. That the petitioner was serving as ASI in Police Deptt and the petitioner working with full zeal and zest to the entire satisfaction of his superiors.
2. That the petitioner was falsely involved in a murder case in F.I.R No. \$19/2015 u/s 302 PPc, 15AA PS Jabbar, with malafide intention, the petitioner performing his duties according to law and rules. **Copy of FIR is attached as annexure-A.**
3. That on the basis of FIR the departmental proceeding was initiating against the petitioner, without charge sheet departmental inquiry was conducted wherein petitioner was not provided proper defense and without any proof the inquiry officer gave recommendation and the without final show cause notice, the petitioner was dismissed from the service vide order dated 20.12.2016. **(Copy of inquiry report and Dismissal order is attached as Annexure-B & C).**
4. That the petitioner being feeling aggrieved filed departmental appeal against the order dated 20.12.2016 before the respondent no.3. the respondent no.3 accepted the departmental appeal vide order dated 03.02.2017 and on acceptance of the departmental appeal the petitioner has been re-instated in to service by withholding of three annual increment with accumulative effect and the petitioner was transferred to district nowshera and the intervening period treated as leave without pay. **Copy of appellate order dated 03.02.2017 is attached as annexure-D.**
5. The petitioner feeling being aggrieved from the order dated 03.02.2017 filed 11-A Petition against the impugned order dated 03.02.2017 wherein he properly requested to condoned the delay and the appellate authority on acceptance of the condoning the delay and decide the 11-A petition on merit vide order dated 22.12.2020, the same was handed over to petitioner on 17.02.2021. **(Copy of departmental appeal and rejection order is attached as Annexure-E & F).**
6. That thereafter, the petitioner filed Service Appeal. The Service Appeal of the petitioner was heard on 02.10.2024. The same was dismissed being service appeal was time bared, the petitioner feeling aggrieved filling this review petition on the following grounds amongst others. **Copy of judgment is attached as annexure-G.**

GROUNDS:

- A) That as the judgment under review, is the outcome of non-reading of actual evidence, therefore, the same can be reviewed legally for which this petition is well in time.
- B) That the Service Appeal of the petitioner was heard on 02.10.2024. The same was dismissed being service appeal is time bared, which was wrong. Because, the rejection order dated 22/12/2020 was handed over to petitioner on 17/02/2021 and the same was not specifically denied by the respondent in their comments because as per law the denial must be specific and should be depended on some evidence as when the copy of the same was handed over to petitioner. The petitioner properly attached the record that the order was handed over to him on 17/02/2021 by filling application for the same on 16/02/2021. Because the same was not served upon the petitioner because the petitioner was transferred from district Mardan to Nowshera thorough impugned order and copy of order was not addressed to petitioner. It is pertinent to mentioned here that the Section-4 of the KP service tribunal Act 1974 is clear on the point that the limitation run from the date of communication of order, the relevant provision of section is mentioned below:
- “Any civil servant aggrieved by any final order, whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later], prefer an appeal to the Tribunal having jurisdiction in the matter”*
- That the same point is clear by the Supreme court of Pakistan in judgment cited as *2016 SCMR 189 and 2013 SCMR 1053*. So, the service appeal of the petitioner was not time bared, so the same may be heard on merits.
- C) That in impugned judgment it is mentioned that the no appeal was filed against the order dated 03/02/2017 which is incorrect that the order dated 03/02/2017 is appellate order against which review petition/mercy petition is provided under 11-A of police Rules 1975, which was filed by the petitioner and properly entertained by the respondent.
- D) That the petitioner was not treated according to law, rules and norms of justice and thus, deprived from his due right.

- 4
- E) That the petitioner was also acquitted under 265-K CRPC from the charges of FIR vide judgment dated 26.01.2021, which is the prove of that the petitioner telling the truth and nothing has concealed from the Deptt.: **Copy of judgment is attached as annexure-H.**
- F) That before passing impugned order no codal formalities was fulfilled and no proper procedure was adopted which is the violation of the Police Rules 1975; hence the impugned order is not sustainable, liable to be set aside.
- G) That the Deptt: at least needs to record statement of Complainant who charge petitioner in FIR, but the deptt: failed to do so, during inquiry.
- H) According to the judgments of the superior court if the case was not yet finalized against the petitioner, the petitioner cannot be penalized for that case and consider him innocent till the finalization of the case.
- I) That under CSR-194/194-A the petitioner was suspended till the order of the Competent court but the petitioner was dismissed from the service which is against the law and rules.
- J) That the petitioner was condemned unheard and has not been treated according to law and rules.
- K) That the petitioner has not been treated accordance with law, fair played justice, despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- L) That neither proper inquiry was conducted examination has been nor any chance of cross examination, no procedure was followed before the penalty was imposed upon the petitioner which is against the law and rules.
- M) That the service appeal of the appellant may be decided on its merits rather to be dismissed on technical grounds.
- N) That the sufficient grounds of innocence of the petitioner exist as per provision of supreme court judgment cited as NLR 2005 TD supreme Court Page 78" as no one punished for the fault of others. So the impugned order is illegal.

3

- O) That no proper procedure has been followed before the awarding the penalty, the whole proceedings were conducted in violation of law and rules. Thus, not tenable in the eye of the law.
- P) That the petitioner seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the petitioner may be accepted as prayed for.

Sajjad Ahmad
PETITIONER
Sajjad Ahmad

THROUGH:

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
(ADVOCATE, HIGH COURT)

&

Uzma Syed
UZMA SYED
(ADVOCATE, HIGH COURT)

6

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

REVIEW PETITION NO: _____ /2024

IN

APPEAL NO.3427/2021



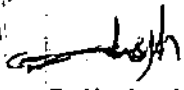
Sajjad Ahmad

V/S

Police Deptt

AFFIDAVIT

I, Sajjad Ahmad , (Petitioner) do hereby affirm that the contents of this review petition are true and correct, and nothing has been concealed from this honorable Tribunal.


DEPONENT


Sajjad Ahmad

Handwritten text in Urdu script, appearing to be a detailed account or report, possibly related to a financial or administrative matter. The text is dense and covers most of the upper half of the page.

Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text
Handwritten Urdu text	Handwritten Urdu text

Handwritten Urdu text at the bottom of the page, including a signature and a date. The date is written as 0302.8391219.

Departmental enquiry against constable Ilyas No:1703 Posted at police station Jabbar. (B) 8

In pursuance of your kind order, the undersigned completed in the above cited inquiry. Its step wise detail is given below:-

STATEMENT OF ILLEGATIONS.

Whereas, constable Ilyas No:1703 while posted at PS Jabbar, now under suspension police line, found negligent for concealing of the facts of the occurrence vide FIR No.419/2015 u/s 302 PPC, 15AA police station Jabbar, as per worthy Additional IG of police, Inv: KPK Peshawar letter No.740/CRC/Inv: dated 01-07-2016, addressed to the undersigned, which for Minor/Major punishment under police rules, 1975.

Proceeding.

For the purpose of scrutinizing the conduct of ASI Sajjad with reference to the above allegations, he was summoned, heard in detail and his statement was got recorded (which is on file). The case file was also perused.

Facts of the case.

The deceased Ishaq had quarreled with his workers who in order to revenge had rushed to home and was advancing armed with klashnikov with aggressive intentions. Meanwhile deceased Hidayat had called ASI Sajjad about the expected unpleasant incident, who had rushed to the spot along with constable Ilyas in a private motorcar.

With the arrival of police deceased Ishaq started firing due to which hidayat got bullet injuries and died. Police in response had fired which caused death of Ishaq. Police on spot has acted rightly but later on had failed to bring facts in writing, instead had shown cross firing between both the deceased which fabricated. Police had reacted quickly on information, had reached on time to avoid bloodshed, but as deceased on sighting police started firing in which Hidayt got killed. Who was present near police party while from police,s firing Ishaq got killed.

Although police had acted rightly on the spot but later on had failed to bring facts in black and white, instead had got frightened from accepting the facts regarding firing on deceased Ishaq.

As deceased Ishaq was armed and was firing in police's direction, from which Hidayt got killed, police at that moment had no other option in self defense but to fire back which resulted Ishaq,s death. The aggressive and criminal act of deceased Ishaq resulted in death of Hidayat and would have caused more harm if had not been stopped by police.

Findings :

Keeping in view the available record, it is evident that Ishaq has died due to police firing, while Ishaq was firing in presence of police due to which Hidayat got killed. Police has acted rightly but had later on failed to bring facts on file and fabricated the story. Hence are recommended for major punishment.

Submitted please


Dy: Superintendent of Police
Katlak Circle

No 940 /SV/KTG, dated 2 11 2016

ATTESTED

ORDER

This order will dispose of departmental inquiry, which has been conducted against ASI Sajjad Khan No. 1327 on the allegation that while posted at Police Station Jabbar Mardan, now under suspension at Police Lines, Mardan is found negligent for concealing of the facts of the occurrence vide FIR No. 419/2015 u/s 302 PPC, 15AA Police Station Jabbar, as per the worthy Additional Inspector General of Police, Investigation, Khyber Pakhtunkhwa, Peshawar Letter No. 7440/CRC/Inv: dated 01.07.2016, addressed to the undersigned, which amounts to grave misconduct on his part and rendered him liable for minor / major punishment as defined in rule, 2(iii) of Police Rules 1975. Therefore he was recommended for departmental action.

In this connection, ASI Sajjad Khan No. 1327, was charge sheeted vide this office No. 7077-79/PA, dated 23.09.2016 and also proceeded him against departmentally through Mr. Inam Jan Khan, DSP/Katlang, Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 941/SI/KTG, dated 02.11.2016. The allegations have been established against him and recommended for Major punishment.

The undersigned agreed with the findings of enquiry officer and the alleged ASI Sajjad Khan No. 1327, is hereby awarded Major punishment of dismissed from service, with immediate effect in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 3052

Dated 20/12/2016.

(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan.

No. 11345-511 dated Mardan the 20-12-2016.

Copy for information and necessary action to:-

1. The AIG/Investigation, Khyber Pakhtunkhwa, Peshawar with reference to his Office Letter No: 7440/CRC/Inv., dated 01.07.2016.
2. The Deputy Inspector General of Police Mardan Region-1, Mardan.
3. The S.P Operations, Mardan.
4. The SP/Investigation, Mardan.
5. The Pay Officer (DPO) Mardan.
6. The E.C (DPO) Mardan.
7. The OSI (DPO) Mardan.

ATTESTED

No. 941 /SI/KTG, dated 2/1/2016

OR
11/2/16

ORDER

Answer-D

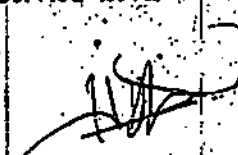
10

This order will dispose-off the appeal preferred by Ex- ASI Sajjad Ahmad No. 1327 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was awarded Major punishment of dismissal from service vide OB No. 3052 dated 20.12.2016.

Brief facts of the case are that ASI Sajjad Khan No. 1327 while posted at Police Station Jabbar Mardan was found negligent for concealing of the facts of the occurrence vide FIR No. 419/2015 u/s 302 PPC, 15AA Police Station Jabbar, as per the worthy Additional Inspector General of Police, Investigation, Khyber Pakhtunkhwa, Peshawar Letter No. 7440/CRC/Inv. dated 01.07.2016, addressed to the District Police Officer, Mardan, which was gross misconduct on his part and rendered him liable for minor / major punishment. He was charge sheeted and also proceeded against departmentally through Mr. Inam Jan Khan, the then DSP/Katlang, Mardan. The Enquiry Officer after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan recommending him for Major punishment. The District Police Officer, Mardan agreed with the findings of enquiry officer and the alleged ASI was dismissed from service.

He was called in orderly room held in this office on 01.02.2017 and heard him in person. Since dismissal from service is very harsh therefore, keeping in view his poor family back grounds, his penalty of dismissal from service is converted into minor punishment of stoppage of three increments with accumulative effect. On re-instatement in Service he is transferred to Nowshera District. The intervening period is treated as leave without pay.

ORDER ANNOUNCED


(JAZ AHMAD) PSP
Regional Police Officer,
Mardan

No. 969-70/ES, Dated Mardan the 03/02 /2017.

Copy forwarded for information and necessary action to the:-

1. District Police Officer, Mardan w/r to his office Memo: No. 55/LB dated 24.01.2017. The Service Record is returned herewith.
2. District Police Officer, Nowshera.

(*****)

ATTESTED

The Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

Through:- Proper Channel.

Subject:- Mercy Petition

Sir,

With due respect I beg to submit that I was dismissed from service by the then DPG Mardan for concealing of facts of case FIR No.419 /2015 U/S 302 TPC PS Jabber vide OB No.3052 dated 20-12-2016, which was converted in to stoppage of 3 increments with accumulative effect by the DIG Mardan Region-1, Mardan vide his office order No.969-70/ES dated: 03-02-2017, against which I am going to submit the present Mercy Petition on the following grounds/justification for favorable consideration:-

1. While serving in PS Jabber, Mardan District, I was proceeded against departmentally and the Enquiry Officer submitted his finding mentioning there in that the Police has done rightly but later on concealed the facts.
2. I have performed my duties as per rules/Law and nothing was concealed.
3. Due to this impugned order, I have put to great financial loss and my service career has also been damaged.
4. I was not aware about the said punishment and it was learnt just now, therefore, delay in submission of Mercy Petition may kindly condoned.

Therefore, I approach your good self to kindly accept my Mercy Petition and the order of punishment of stoppage of 3 increments with accumulative effect awarded by the DIG Mardan/Region Mardan vide his office order NO.969-70/ES dated 03-02-2017 may kindly be withdrawn, so that my service career may not be damaged.

I shall be highly obliged and will pray for your long life and prosperity.

Sir,

FORWARDED PLS.

RI. PL. NOWSHERA

12-7-19

Yours Obediently,

(Sajjad Ahmad)
S/O. Police Lines Nowshera.

07/19

ATTESTED

DEPUTY RSR

25/7/19

F

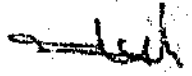
(15)

(15)

جناب عالی

مزارش بخضور انور ہے کہ سائل نے جناب IGP صاحب کو انگریمنٹ بحالی کے لئے درخواست
جمع کرانی تھی۔ جناب IGP صاحب کے دفتر میں پتہ براری کی، تو کہا گیا کہ اس بارے میں RPO مردان / DPO
مردان کو بحوالہ آرڈر نمبر 20/79-4968-S جنھی ارسال کی گئی ہے۔
لہذا استدعا ہے کہ سائل کو فوٹو کاپی آرڈر جاریہ IGP صاحب دینے کا حکم صادر فرمائیں۔

العارض.



SI سجاد خان 713/MR

ٹریک ہائی ویز، خیبر پختونخوا پشاور

مورہ: 16-02-2021

EC

For inspection.

DPO/Mardan
16/2/21

ATTESTED

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. SI 4967 /20, Dated Peshawar the 22/12/2020.

13

ORDER

This order is hereby passed to dispose of Mercy Petition under Rule 1632 Police Rule-1934 submitted by Sub-Inspector Sajjad Ahmad, No. 1327 of Mardan District. The appellant was awarded punishment of Dismissal from service by the DPO/Mardan vide OB No. 3052 dated 20.12.2016.

Later on the appellant preferred an appeal to the RPO/Mardan. The RPO/Mardan reinstated him in service and the punishment of Dismissal from Service awarded to him is converted into minor Punishment of Stoppage of Three (03) Increments with accumulative effect and the intervening period was treated as leave without pay vide order Endst. No. 969-70/ES, dated 03.02.2017.

The petitioner preferred a Mercy Petition to the Worthy IGP/Khyber Pakhtunkhwa. He was called in Orderly Room and heard him in person and relevant record perused. He could not satisfy the undersigned and badly failed in producing any plausible evidence about his innocence.


Keeping in view the position explained above, the Mercy Petition is hereby filed of the petitioner.

Sd/-
DR. ISHTIAQ AHMAD)PSP/PPM
Addl: IGP/HQrs;
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No. SI 4968-79 /20.

Copy of the above is forwarded to the:-

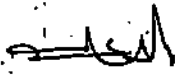
1. Regional Police Officer, Mardah Region, Mardan w/r to his office memo; No. 11867/ES, dated 07.10.2019.
2. District Police Officer, Mardan.
3. ISO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Establishment CPO Peshawar.
7. Office Supdt: E-II; E-III, CPO Peshawar.


(ZAHOOR ULLAH AFRIDI)PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

18/12

Photo copy received by hand on 17-02-2021

ATTESTED


SI 18/12

(9)

14

Service Appeal No.3427/2021 titled "Sajjad Ahmad Vs. Police Department"

ORDER

2nd Oct. 2024

Kalim Arshad Khan, Chairman: Learned counsel for the appellant present.

2. Appellant's case in brief, as per averments of appeal, is that he was serving as ASI in the Police Department; that he was booked in FIR No.419 dated 16.12.2015 and on the basis of the said FIR, departmental proceedings were initiated which resulted into his dismissal from service vide order dated 20.12.2016; that against the said order, he filed departmental appeal, vide which, the authority converted the penalty of dismissal from service into minor penalty of withholding of three annual increments with accumulative effect by treating the intervening period as leave without pay, vide order dated 03.02.2017; that feeling aggrieved of the order dated 03.02.2017, he filed Mercy on 16.02.2021, but the same was rejected vide order dated 22.12.2020, hence, the instant service appeal.

3. Arguments heard. Record perused.

4. In the present case, the appellant, who served as an Assistant Sub-Inspector (ASI) in the Police Department, contends that he was dismissed from service following his involvement in FIR No. 419 dated December 16, 2015. The dismissal, enacted on December 20, 2016, prompted the appellant to file a departmental appeal. This appeal resulted in a modification of the dismissal to a lesser penalty of withholding three annual increments, with the intervening period classified as leave without pay, as per the order dated February 3,


2017. Dissatisfied with this decision, the appellant submitted a Mercy petition on February 16, 2021, which was ultimately rejected on December 22, 2020. Consequently, he has initiated the current service appeal to contest the actions taken against him.


5. The appellant has not filed any departmental appeal against the order dated 03.02.2017 and only filed a mercy petition, and that too, even if we consider that as appellate order, is time barred as he has filed the instant service appeal after 69 days after rejection order dated 22.12.2020, in view of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The same is reproduced as under:

"4. Appeal to Tribunals.-- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter."

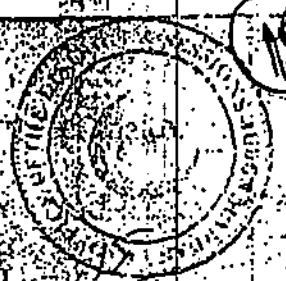
6. In view of the above, instant service appeal, being barred by time, is dismissed with costs. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 2nd day of October, 2024.*


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Amexur - 67



15

IN THE COURT OF IFTIKHAR ULAHI
ADDL. SESSIONS JUDGE/JUDGE MODEL CRIMINAL TRIAL COURT
MARDAN

2507
30-01-21
94/21

Case No. 2-1177 of 04.11.2019

STATE.....VS.....SAJJAD AHMAD ETC

FIR NO. 419 DATED 16.12.2015 U/S 302 PPC OF P.S. Jabber, Mardan.

Order--30
26.01.2021

Mr. Haider Ali, APP for the State present.
Accused Sajjad and Ilyas present on bail alongwith their counsel.
Complainant Johar Khan s/o Zabita Khan also present alongwith his
counsel who recorded his statement to the effect that he is not the eye
witness of the occurrence and had charged the accused facing trial on
the basis of suspicion who had now satisfied him regarding their
innocence by taking oath on Holy Quran, therefore, he has got no
objection if the accused facing trial are acquitted of the charges leveled
against them. To this effect his statement recorded and placed on file. In
view of his statements recorded before the court learned counsel for the
accused facing trial submitted application u/s 265-K Cr.P.C. notice
whereof was given to the Prosecution. Arguments on the application u/s
265-K Cr.P.C heard and record perused.

IFTIKHAR ULAHI
ADDL. SESSIONS JUDGE
MARDAN
26-01-2021

Certified To Be True Copy.

04 FEB 2021

Examiner Copying Branch
Session Court Mardan

02. Brief facts of the case are that on 16.12.2015,

complainant Johar Khan s/o Zabita Khan at 2225 hours at DHQ
Hospital Mardan reported the matter to local police to the effect that on
the fateful day i.e. on 16.12.2015 his deceased son Muhammad Ishaq
had gone for work and was present with one Hidayat who was required
to the local police in a criminal case when accused facing trial Sajjad

ATTESTED

(15) (17)

Ahmad being incharge of PP Sawaldher first killed the said Hidayat and then fired at his deceased son with his Kalashnikov with the intention to kill him, as a result of which he got hit on his front side chest and died on the spot. The report of the complainant was drafted in the shape of murasila on the basis of which the present FIR No.419 dated 16.12.2015 was initially registered u/s 302 PPC at Police Station Jalber, Mardan against the accused facing trial Sajjad Ahmad and investigation was initiated into the matter. Later on during the investigation the complainant recorded his statement under section 164 Cr.P.C before the court of the then learned Senior Civil Judge/Judicial Magistrate Mardan on 02.12.2016 wherein he also charged the accused facing Ilyas, therefore on the strength of his statement recorded u/s 164 Cr.P.C accused Ilyas was also arrayed as an accused in the instant case.

03. After arrest and completion of investigation against the accused, challan against them was submitted for trial which was entrusted the court of the then learned ASJ-III, Mardan. The accused were summoned who being on bail attended the court and after complying with the provisions under section 265-C Cr.P.C, charge was framed against them to which they pleaded not guilty and claimed trial. Subsequently during the course of trial the case was entrusted to this court being Model Criminal Trial Court at District Mardan. Today the complainant appeared and recorded his statement to the effect that the accused facing trial have satisfied him regarding their innocence therefore, he does not want to depose against them as witness and has got no objection on acquittal of the accused facing trial. Thus learned

ATTESTED

26.01.2021

To the file copy
Su
FEB 2021

(18)

counsel for the accused facing trial submitted application u/s 265-K Cr.P.C for disposal of the case by invoking powers u/s 265-K Cr.P.C, hence prosecution was given notice u/s 265-K Cr.P.C.

04. Arguments of learned counsel for parties heard and case file perused.

05. Perusal of case file reveals that the occurrence is unseen and un-witnessed one. There is no ocular evidence in the present case and the circumstantial evidence produced in the case or proposed to be produced as per calendar of witnesses is not sufficient to connect the accused facing trial with the commission of offence. Moreover it is also clear on the face of record that complainant Johar Khan s/o Zabita Khan is not willing to depose against the accused facing trial and has recorded his statement before the court to the effect that he does not want to charge the accused facing trial being satisfied by them regarding their innocence by taking oath on Holy Quran, who even otherwise is not the eye witnesses of occurrence nor of any circumstance pointing towards guilt of accused. The accused facing trial had also not confessed their guilt before the court of competent jurisdiction. The evidence so far produced by prosecution is not at all sufficient to connect the accused with the commission of offence and to establish their guilt for the alleged offence. More so the accused facing trial Sajjad has been charged in the FIR whereas the accused facing trial Ilyas has later on been charged by the complainant in his statement u/s 64 Cr.P.C recorded before the court of Judicial Magistrate with a delay

31/11/2021
Judge Magistrate
Mardan
26-01-2021

Certified To Be True Copy

Su

11/1/2021

Examiner Grouping Branch
Session Court Mardan

ATTESTED

5

19

of almost one year but no source of his satisfaction has been disclosed in the FIR or in his statement u/s 164 Cr.P.C.

06. Thus in the attending circumstances of the case, the accused facing trial cannot be forced to face the rigors of trial indefinitely when complainant named above simply does not want to depose against them.

07. For the foregoing reason, court is convinced that there is no probability of conviction of accused even if court proceeds with the trial which would be a futile exercise. Therefore, accused facing trial namely *Sajjad Ahmad s/o Ali Akbar Khan* and *Muhammad Ilyas s/o Syed Muhammad Younis* are acquitted of the charges in case FIR No.419 dated 16.12.2015 u/s 302/34 PPC of PS Jabber, Mardan by invoking the provisions of section 265-K Cr.P.C. Accused are on bail, their bail bonds stand cancelled and the sureties there under are discharged from the liabilities under these bail bonds.

08. Case property be disposed off according to law on expiry of period of appeal/ revision.

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

Announced:
Dated: 26.01.2021.

ذبح اللہ کا رکوع آرزو صاحبہ فاضلہ البرکت

Name of Applicant	
Date of	2166
Date	02-02-21
Date	04-02-21
Date	04-02-21
Case	P=04
urgent	
Signal of Cr	See
Date of Delivery	06-02-2021

(IFTIKHAR ELAHI)
Addl. Sessions Judge
Judge MCTC, Mardan

Iftikhar Elahi
Judge MCTC, Mardan

Certified To Be True Copy

8 FEB 2021

Session Court Mardan

TESTED

VAKALAT NAMA

(13)

NO. _____/2021

IN THE COURT OF K.P. Service Tribunal Peshawar

Sajjad Ahmad

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We Sajjad Ahmad (Petitioner)

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his fee left unpaid or is outstanding against me/us.

Dated _____/2021

Sajjad Ahmad
(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
Advocate High Court
Peshawar.

OFFICE:

Room # FR-8, 4th Floor,
Bilfour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0306-5109438)