

LAHORE HIGH COURT B U L L E T I N



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FORTNIGHTLY CASE LAW BULLETIN

(01-10-2023 to 15-10-2023)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Supreme Court of Pakistan**
Chairman, Sarhad Development Authority PM, Peshawar and another v. Tafoor-ur-Rehman etc.
Civil Petitions No.2594, 2816, 2817 and 2987 of 2020
Mr. Justice Umar Ata Bandial, H CJ, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 2594 2020.pdf

Facts: Through these civil petitions the petitioners assailed the judgment of Peshawar High Court on the ground that the amount of compensation reflects the market value of the property acquired. The calculation of the additional amount under Section 28 of the KP Land Acquisition Act, 1894 ("Act") bears nexus to the market value and not to the compulsory acquisition charges, therefore, the calculation envisaged by the impugned judgment is erroneous.

Issue: Whether the award of a sum of 15% of market value of the property compulsorily acquired by the state to the owners thereof falls within the meaning of the expression compensation or not?

Analysis: The meaning of the word "compensation" in the context of the Land Acquisition Act, 1894 includes many factors for assessing the market value of the property acquired. These factors as already noted are contained in Section 23(1) of the Act which have been elaborated from time to time by judgments of this Court. It is appreciated that the right to acquire, hold and dispose of property subject to the Constitution and any reasonable restriction imposed by law in the public interest is a fundamental right of every citizen under Article 23 of the Constitution. Article 24(1) of the Constitution guarantees that no person shall be deprived of his property save in accordance with law. The Constitution envisages compensation for private property that is compulsorily acquired by the State for a public purpose. Clearly compulsory acquisition of property means that it is being involuntarily forfeited from the owner thereof in favour of the State for a public purpose. Such involuntary deprivation of property itself is a crucial factor in the calculation of compensation to be awarded in consideration of such taking. The language of Section 23(2) of the Act addresses this aspect of the case squarely and awards an amount of 15% of the market value of the land as compensation for the said property being acquired compulsorily. In this respect the factors for determination of market under Section 23(1) of the Act have no application. Their only relevance is the ascertainment of market value upon which a 15% amount thereof is added to compensate the owner of the property for the forcible loss of his private property.

Conclusion: The award of a sum of 15% of market value of the property compulsorily acquired by the state to the owners thereof falls within the meaning of the expression compensation.

2. **Supreme Court of Pakistan**
Federal Govt. of Pakistan thr, M/o. Defence Rawalpindi and another v. Mst. Zakia Begum and others, and other Petitions.
C.R.P.446/2022 IN C.A.2150/2019 etc.
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p.446_2022.pdf

Facts: Through these review petitions appellant set forth their grievance against the judgment passed by this Court regarding observations of increase in value of acquired land to the amount that the High Court has ordered for the reason that the original value as determined by the Collector and the Referee Court was based on revenue classifications which have no relevance for the purposes of calculating compensation.

Issues: i) Whether acquisition in small parcels, awarding compensation based on revenue classifications to such parcels of land is to the disadvantage of the landowners?
 ii) Whether calculation of potential value of acquired land can be left upon the discretionary assessment of courts?

Analysis: i) When land is acquired in small parcels, awarding compensation based on revenue classifications to small parcels of land is to the disadvantage of the landowners, because it undermines the potential value of the large parcels of land acquired for a single project. Consequently, the uniform valuation for the entire land acquired for the project possesses justification.
 ii) The calculation of potential value of acquired land by a Court of law starting from the referee Court up to Supreme Court cannot be left to their discretionary assessment. There must be guidelines framed by the competent legislative or regulatory bodies for determining the potential value of the land acquired for various types of public purpose projects.

Conclusion: i) Yes, acquisition in small parcels, awarding compensation based on revenue classifications to such parcels of land is to the disadvantage of the landowners.
 ii) Calculation of potential value of acquired land cannot be left upon the discretionary assessment of courts; instead, guidelines should be established by competent legislative or regulatory bodies to determine it.

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3. **Supreme Court of Pakistan**
Munir Husain and others v. Riffat Shamim and others
Civil Review Petition No. 557 of 2022 in Civil Petition No. 3842 of 2022
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p.557_2022_02sept2023.pdf

Facts: The paternal uncles and aunts of respondent no. 02 challenged her paternity after about 17 years and did so after the death of her father. This Court had declined to

grant leave to appeal and had upheld the judgment of the Islamabad High Court, hence, this review petition.

Issue: Whether mere filing of review petition operates as stay?

Analysis: The judgment of the High Court has been not implemented and petitioners continue to retain possession of property. The petitioners continue to be in open defiance not only of the judgment of the High Court but also of this Court while respondent no. 02 remains deprived of her inheritance. The mere filing of a review petition does not operate as stay...

Conclusion: Mere filing of a review petition does not operate as stay.

4. Supreme Court of Pakistan
Commissioner Inland Revenue, Zone-I, RTO, Peshawar and another v. Ajmal Ali Shiraz M/s Shiraz Restaurant, Peshawar
Civil Review Petition No. 426 of 2022 in Civil Appeal No. 51 of 2020
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p. 426 2022 02sept2023.pdf

Facts: In civil appeal it was contended that the order amending the assessment was passed by the Deputy Commissioner, Inland Revenue, who was not authorized to amend the assessment. The order passed in civil appeal has now sought to be reviewed on the ground that the Deputy Commissioner was delegated powers to amend the assessment vide an order issued by the Commissioner Inland Revenue.

Issue: Whether the order passed by Commissioner Inland Revenue delegates power of amendment of assessment of Commissioner to Deputy Commissioner when it is not referring section 122 of ITO, 2001 with regard to amendment of assessment and neither same has been gazetted nor available on website of FBR?

Analysis: The order which is claimed to delegate the power of Commissioner Inland Revenue to amend the assessment to deputy Commissioner does not refer to section 122 of the Ordinance with regard to amendment of assessment nor is it so stated under column No. 4 of the Table pertaining to Jurisdiction... All notifications/orders should be gazetted and also displayed on the website of the FBR to facilitate the officers of the FBR, tax practitioners and taxpayers. We enquired from the learned counsel whether the said order has been gazetted and were informed that it was not. We then enquired whether that said order is available on the website of the Federal Board of Revenue ('FBR') and were told that it was not. The said order does not delegate the statutory power of the Commissioner to Deputy Commissioners and also does not grant such specific authorization...

Conclusion: The order passed by Commissioner Inland Revenue does not delegate power of amendment of assessment of Commissioner to Deputy Commissioner when it is not referring section 122 of ITO, 2001 with regard to amendment of assessment and neither same has been gazetted nor available on website of FBR.

5. Supreme Court of Pakistan
Ghansham Das v. Government of Khyber Pakhtunkhwa through Chief Secretary, Pakistan Forest Institute, Peshawar and others
Civil Petitions No. 546 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._546_2021.pdf

Facts: Through this petition, filed under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 the petitioner has challenged the judgment of the Service Tribunal, whereby the service appeal filed by the petitioner under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 was dismissed.

Issues:

- i) What is the role of deputation in government department?
- ii) What is the maximum period of deputation as per ESTA Code?
- iii) Whether the period of deputation has to be defined specifically and the officer automatically relieved from his office duties?
- iv) Whether the order of the competent authority can be questioned regarding the period of deputation?
- v) Whether the period of deputation can be curtailed or extended by the Competent Authority?

Analysis:

- i) Deputation within a government department holds a significant role, necessitating recruitment under exceptional circumstances when there is a lack of expertise within the department in the relevant subject or field. In such situations, the prescribed procedure outlined in Rule 20-A of the Civil Servants (Appointment, Promotion, and Transfer) Rules, 1973, must be adhered to.
- ii) It is imperative to emphasize that deputation should not entail an indefinite period of service but should conform to the specified duration for the deputation. The normal period of deputation is three years and the concerned officer has to report back after completion of his three years period unless it has been extended to further two years and the maximum period is five years in terms of Serial No.27 (iv) of ESTA Code Volume-1 (Civil Establishment Code), whereby both the borrowing and lending organization should ensure immediate repatriation of the deputationist.
- iii) The period of deputation has to be defined specifically and after expiry of the said period, the officer should automatically be relieved from his office duties unless his period has been extended.
- iv) The deputationist by no stretch of the imagination and in the absence of any specific provision of law can ask to serve the total period of deputation and he can be repatriated being a deputationist by the Competent Authority in the interest of

exigency of service as and when so desired and such order of the competent authority cannot be questioned. The Civil Servants Act, 1973 and the rules made there-under as well as ESTACODE are silent about the fact that a deputationist must serve his entire period of deputation and this omission seems deliberate enabling the Competent Authority to utilize the service of an employee in the manner as it may deem fit and proper.

v) The period of deputation can at best be equated to that of an expression of the maximum period which can be curtailed or extended by the Competent Authority and no legal or vested rights whatsoever are available to a deputationist to serve his entire period of deputation in the borrowing Department.

- Conclusion:**
- i) Deputation within a government department holds a significant role, necessitating recruitment under exceptional circumstances when there is a lack of expertise within the department in the relevant subject or field.
 - ii) The maximum period is five years in terms of Serial No.27 (iv) of ESTA Code Volume-1 (Civil Establishment Code).
 - iii) The period of deputation has to be defined specifically and the officer automatically relieved from his office duties.
 - iv) The deputationist by no stretch of the imagination and in the absence of any specific provision of law can ask to serve the total period of deputation and he can be repatriated being a deputationist by the Competent Authority in the interest of exigency of service as and when so desired and such order of the competent authority cannot be questioned.
 - v) The period of deputation can be curtailed or extended by the Competent Authority.

- 6. Supreme Court of Pakistan**
Allah Dewayo Shahani v. The State through Prosecutor General, Sindh.
Criminal Petition No.52-K of 2023
Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 52 k 2023.pdf

Facts: Through this criminal petition leave to appeal is directed against the impugned order passed by the High Court in Criminal Bail Application, whereby the petitioner was declined post arrest bail in FIR lodged under Sections 302, 324, 114, 147, 148 & 149 PPC.

- Issues:**
- i) Whether contradiction between the role attributed to the accused person and postmortem report can be relied as sole ground for enlargement on bail?
 - ii) Whether police report is binding being ipse dixit at bail stage?
 - iii) Whether every member of an unlawful assembly stands accountable for committing the crime in prosecution of common object?
 - iv) Whether demeanor of each of the members of the unlawful assembly is relevant for deciding the question of common object?
 - v) Whether in criminal cases including bail matters each case has its own peculiar

facts which are to be considered according to the facts and circumstances of each case?

- Analysis:**
- i) When the injury attributed to the accused person was on the right palm, but according to the postmortem report the said injury is shown at the wrist, and it is urged that it is a case of further inquiry, but Supreme court do not rely on a sole ground for the enlargement on bail when the ocular account is assigning a specific role to the petitioner...
 - ii) It is a well settled exposition of law that the police report is not binding being ipse dixit, and therefore merely an assertion at bail stage without proof or opinion...
 - iii) Section 149, PPC envisages that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence...According to Section 141 PPC, an assembly of five or more persons is designated an unlawful assembly for a common object of the persons composing that assembly. No doubt that the common object of the assembly must be one of the five objects mentioned in Section 141 PPC which can be gathered from the milieu of the assembly including the arms used by them and the behavior of the assembly at the scene of crime, but it is quite noticeable from the language used in Section 149 PPC which makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence.
 - iv) In order to decide the question of common object of an unlawful assembly, the demeanor of each of the members of the said assembly is relevant for consideration of the court during trial.
 - v) In criminal cases, including bail matters, each case has its own peculiar facts which are to be considered according to the facts and circumstances of each case.

- Conclusion:**
- i) The contradiction between the role attributed to the accused person and postmortem report cannot be relied as sole ground for enlargement on bail.
 - ii) The police report is not binding being ipse dixit at bail stage without proof or opinion.
 - iii) Yes, every member of an unlawful assembly stands accountable for committing the crime in prosecution of common object.
 - iv) Yes, demeanor of each of the members of the unlawful assembly is relevant for deciding the question of common object.
 - v) Yes, in criminal cases including bail matters each case has its own peculiar facts which are to be considered according to the facts and circumstances of each case.
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- 7. Supreme Court of Pakistan**
Said Nabi v. Ajmal Khan and another
Criminal Petition No.104-P of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.104_p_2023.pdf

Facts: Through the instant petition the petitioner has assailed the order passed by the learned Single Judge of the High Court, with a prayer to grant post-arrest bail in case registered vide FIR under Sections 302/324/427/148/149/337-A(ii)/337-F(ii) PPC.

Issue: Whether at bail stage in a murder case, absconsion of an accused can be considered in isolation to keep the accused behind the bars?

Analysis: After having gone through the impugned judgments passed by the learned two courts below, we are of the view that the only allegation against the petitioner that remains in the field is that he remained absconder for five years. No doubt that abscondence does constitute a relevant factor when examining question of bail as it is held by [Supreme] Court in *The State Vs. Malik Mukhtar Ahmed Awan* (1991 SCMR 322) but this aspect has been subsequently dealt by [Supreme] Court and it was held that the same has not to be considered in isolation to keep a person behind the bars for an indefinite period. It is settled by [Supreme] Court that a person who is named in a murder case, rightly or wrongly, if becomes fugitive from law, his conduct is but natural. Reliance is placed on *Rasool Muhammad Vs. Asal Muhammad* (PLJ 1995 SC 477). This aspect was further elaborated by [Supreme] Court in another judgment reported as *Muhammad Tasaweer Vs. Hafiz Zulkarnain* (PLD 2009 SC 53). We have been informed that nothing incriminating has been recovered from the possession or at the pointation of the petitioner. The only distinguishing feature, which was in field was nothing but the absconsion of the petitioner, which has already been elaborated above. In these circumstances, coupled with the fact that the case of the petitioner is at par with the co-accused, since acquitted, the petitioner has made out a case for concession of bail.

Conclusion: The absconsion of accused cannot be considered in isolation at bail stage because a person who is named in a murder case, rightly or wrongly, if becomes fugitive from law, his conduct is but natural.

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- 8. Supreme Court of Pakistan**
Naveed Sattar v. The State etc.
Criminal Petition No. 317-L of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.317_1_2023.pdf

- Facts:** Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, order of declining bail has been assailed.
- Issue:** Whether Call Data Record (CDR) can be treated as a conclusive piece of evidence to connect the petitioner with the commission of the crime?
- Analysis:** ... The identification parade was conducted after petitioner's nomination by the complainant and in such circumstances, prima facie the sanctity of such test identification parade is open for determination. So far as the CDR is concerned ... in absence of any concrete material the CDR is not a conclusive piece of evidence to ascertain the guilt or otherwise of an accused particularly when photographs allegedly connecting the petitioner with the commission of the crime are never sent for forensic examination.
- Conclusion:** CDR is not a conclusive piece of incriminating evidence and it always requires corroboration.

9. Supreme Court of Pakistan
Manzar Abbas, Farhan Nazar. v. District Police Officer, Sargodha, etc.
Civil Petition NO. 3041, 3105 of 2020
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3041_2020.pdf

- Facts:** Through these petitions under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order passed by the Punjab Service Tribunal, wherein dismissal from service of the petitioners has been upheld.
- Issue:** Whether acquittal in criminal case precludes departmental proceedings initiated on the same charge?
- Analysis:** Acquittal in criminal trial does not serve as an embargo against disciplinary proceedings, and that departmental and criminal proceedings may proceed concurrently, and that result of one does not impinge upon the other. Nonetheless an acquittal in criminal case may be considered during disciplinary proceedings but cannot be the sole determining factor in deciding the fate of the disciplinary proceedings. ... The overall conduct including abuse of official position is to be considered. The gravity of all actions stands independently of the outcome of the criminal proceedings. The principles of accountability and the rule of law must be upheld to preserve the sanctity of the legal system. Thus, response in the form of disciplinary action may be justified and essential to deter similar conduct in the future.
- Conclusion:** Acquittal in criminal trial does not preclude disciplinary proceedings initiated on same charge. However, facts and gravity of misconduct is to be considered in every case independently.

- 10. Supreme Court of Pakistan**
Saif-ur-Rehman v. Ijaz and another
C.A.1573/2017
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1573_2017.pdf

Facts: This appeal, by leave of the Court, has been filed against the judgment of the Peshawar High Court, whereby civil revision filed by the appellant was dismissed and the orders of the first appellate court as well as of the executing court issuing warrant of possession against the appellant were upheld.

Issues:

- i) Whether defendant in the case resulting in its dismissal possesses the legal status to be recognized as a decree-holder to initiate execution proceedings?
- ii) Whether it is necessary that a decree-holder should be a party to the decree?
- iii) Executing Court cannot go beyond the decree. Is there any exception to this rule?
- iv) What are the revisional powers of High Court?

Analysis:

- i) The decree actually connotes the conclusive determination of the rights of the parties with regard to all or any of the matters in controversy in the suit. The word "parties" has been used rather than plaintiff or defendant. It clearly means that a decree may determine the rights of the plaintiff(s) or the defendant(s). When the decree determines certain rights to which the defendant(s) is/are held entitled, then in such a case the defendant(s) would also be included in the definition of "decree holder". The words 'decree holder' cannot, therefore, be restrained to the persons who have stood on the pane of plaintiffs during proceedings of the case. Such a narrow interpretation would compel repetition of adjudication in Courts of law and parties would be litigating for declaration of such rights which are already settled and declared by the Courts. In this fast-paced modern era, neither the Courts nor the parties can indulge in the luxury of engaging in multiple rounds of litigation to establish or revise rights that have already been declared. When the Courts once declare some right after a due process and find it-enforceable and such a decision gets finality then all the people entitled under such a decree would fall in the definition of "decree-holder" to file an application for execution under Order XXI, Rule 10, C.P.C. regardless of the fact whether they stood on the pane of the plaintiffs or the panel of the defendants. Thus, the "decree-holder" would mean a person who is entitled to enforcement of a right under a decree.
- ii) A long ago, in Vythilinga Pandarasannadhi v. the Board of Control, (AIR 1932 Madras 193), a somewhat similar question came for consideration before the Madras High Court. In that case, a stranger party (Board of Control) sought execution of a decree whereupon the appellant before the Madras High Court raised the objection that it was not a party to the decree, it was a creation of the decree itself; therefore, it cannot be termed as decree-holder and as such cannot execute the decree. The Madras High Court overruled the said objection while

observing that a decree-holder need not be a party to the decree. It is enough if the decree confers some right enforceable under the decree upon some persons mentioned in it. (...) This implies that not only the defendants but also even strangers upon whom certain rights have been conferred through the decree can seek the enforcement/execution of the decree.

iii) The law on the subject is so settled in the terms that an executing Court cannot go behind a decree but must execute it as it stands. (...) Nonetheless, there are some exceptions to the above settled rule where-under an executing Court cannot look beyond the decree or look into the judgment, which are as follows:

i) the executing Court can look into the question of whether the decree or part thereof is executable or in-executable and if for any reason the decree has become in-executable, the executing Court is empowered to declare so and if a part of the decree is in-executable and that part is severable from other part(s) of the decree then the executing Court is empowered to refuse the execution of the in-executable part of the decree and may proceed with the execution of the rest of the decree. (Tauqeer Ahmad Qureshi v. Additional District Judge (PLD 2009 Supreme Court 760);

ii) the executing Court can look into the judgment in order to find the exact property when the decree is silent regarding what property was the subject matter of execution (Allah Ditta v. Ahmed Ali Shah (2003 SCMR 1202); and

iii) The executability of a decree can be questioned by the executing court if it is satisfied that (a) the decree is a nullity in the eyes of the law, (b) it has been passed by a Court having no jurisdiction (c) the execution of the decree will not infringe the legal rights of the decree-holder, if refused to be executed or (d) the decree has been passed in violation of any provision of law. (Fakir Abdullah v. Government of Sindh (PLD 2001 Supreme Court 131)

iv) The revisional jurisdiction of High Court is meant to rectify; to obviate, forefend and stave off the exercise of jurisdictional errors/defects and the illegalities and/or material irregularity committed by the subordinate Courts.

Conclusions: i) Yes, when the decree determines certain rights to which the defendant(s) is/are held entitled, then in such a case the defendant(s) would also be included in the definition of "decree holder".

ii) A decree-holder need not be a party to the decree. It is enough if the decree confers some right enforceable under the decree upon some persons mentioned in it.

iii) No, a person despite having been declared as lawful owner of suit property cannot seek possession thereof when decree sought to be executed does not provide for it.

iv) See above

v) The revisional jurisdiction of High Court is meant to rectify; to obviate, forefend and stave off the exercise of jurisdictional errors/defects and the

illegalities and/or material irregularity committed by the subordinate Courts.

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- 11. Supreme Court of Pakistan**
Sohail Akhtar v. The State
Rahul Naazir v. Sohail Akhtar etc.
Jail Petition No.345/2017 and Criminal Petition No. 465/2017
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p. 345_2017.pdf

- Facts:** The petitioner was tried by the Additional Sessions Judge for offences under Sections 302/34/324/337-D, PPC and he was convicted and sentence to death as Ta'zir etc. Aggrieved of his conviction and sentence, the petitioner filed a criminal appeal before the High Court, whereas the trial Court transmitted murder reference. The appeal filed by the petitioner was dismissed with modification in his sentence from death to imprisonment for life and Murder Reference was answered in the negative. Being aggrieved of the above decision, the petitioner has filed Jail Petition against his conviction, whereas the complainant has moved Criminal Petition for enhancement of sentence.
- Issue:** Whether recovery of crime empties secured from the place of occurrence which was dispatched to the Forensic Science Laboratory after arrest of the accused can be termed as inconsequential?
- Analysis:** The High Court through the impugned judgment has rightly termed the recovery as inconsequential keeping in view the fact that crime empties secured from the place of occurrence were dispatched to the Forensic Science Laboratory after arrest of the petitioner...
- Conclusion:** Recovery of crime empties secured from the place of occurrence which was dispatched to the Forensic Science Laboratory after arrest of the accused can be termed as inconsequential.

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- 12. Supreme Court of Pakistan**
The State through Advocate General KPH, Peshawar v. Saadat Khan and another
Criminal Petition No.54-P of 2012
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 54_p_2012.pdf

- Facts:** Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner/State has challenged the judgment passed by the Peshawar High Court, whereby Criminal Appeal filed by the respondent, was allowed; judgment of trial Court was set aside and the respondent was acquitted of the charge.

- Issues:** i) Whether the material contradictions in the statements of the complainant as well as the prosecution witnesses are fatal to the prosecution case?
ii) Whether an adverse inference against the prosecution can be drawn where the prosecution has abandoned the eyes witnesses?
- Analysis:** i) It transpires from the record that there are material contradictions in the statements of the complainant as well as the prosecution witnesses which are fatal to the prosecution case.
ii) Two independent witnesses have been abandoned, thus an adverse inference has to be drawn against the prosecution.
- Conclusion:** i) The material contradictions in the statements of the complainant as well as the prosecution witnesses are fatal to the prosecution case.
ii) An adverse inference against the prosecution can be drawn where the prosecution has abandoned the eyes witnesses.

13. Supreme Court of Pakistan
Meeru Khan v. Mst. Naheed Aziz Siddiqui & others
Civil Petition No.609 of 20 20
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 609_2020.pdf

- Facts:** By means of this Civil Petition for leave to appeal, the petitioner has impugned the Order rendered by the learned High Court of Sindh, which was considered to be time barred and dismissed along with pending applications.
- Issue:** Whether, question as to limitation may arise if time is accorded by the Court for making the deficiency good under section 149, CPC and can technically a lis be disposed off in such situation on ground of limitation?
- Analysis:** It is discernible from Section 149, CPC that it expounds an exception to the set of guidelines and rules encompassed under Sections 4 and 6 of the Court Fees Act, 1870. The power of the Court conferred under Section 149 is somewhat transient in nature and enunciates an interim measure only; it does not, however, invest any power to exempt the payment of the requisite court fee altogether. The exercise of this discretion by the Court at any stage is, as a general rule, expected to be exercised in favour of the litigant on presenting plausible reasons which may include bona fide mistake in the calculation of the court fee; unavailability of the court fee stamps; or any other good cause or circumstances beyond control, for allowing time to make up the deficiency of court fee stamps on a case to case basis. The discretion can only be exercised where the Court is satisfied that sufficient grounds are made out for non -payment of the court fee in the first instance. It is worth reiterating that this power is always subject to the discretion of the Court in appropriate and fit cases and the litigant cannot claim the exercise of this discretion as of right or privilege in every case. A generous or easygoing view cannot be taken to cover up a premeditated strive or endeavour to avoid the

payment of requisite court fee perfunctorily. The expression “at any stage” alluded to in Section 149 accentuates that the deficiency, if any, on account of court fee can be ordered to be made good by the Appellate Court at any stage of proceedings in appeal. The provision delineated under Order VII, Rule 11 and Section 149 , CPC have to be read collectively and in unison. In case of deficiency in the court fee, the Court cannot dismiss the suit or appeal without pinpointing the inadequacy of court fee and then fixing a timeline for payment. After compliance of the order within the stipulated timeframe, it shall have the same force and effect as if the court fee had been paid in the first instance. On the face of it, Section 149 relates to the sanction of time for the payment of court fee in the beginning, while Section 148 is germane to the enlargement of time where any period is fixed or granted by the Court for any act prescribed or allowed by the CPC, and allows the Court to, in its discretion, from time to time, enlarge such period even where the period originally fixed or granted may have expired. It goes without saying that when time is allowed or extended by the Court for the payment of the requisite court fee, such order cannot be recalled unless it formally reviewed. The policy of the law with the gateway of a beneficial provision is not intended to penalize or victimize the litigant on account of a deficiency in court fees. By no stretch of imagination have the laws vis-à-vis court fees and valuation of suits been envisioned to make available an apparatus to the parties under litigation to circumvent the decisiveness of the lis on merits or to elongate the life of the lis by raising objections as to court fees and valuation of the suit; therefore it is also an obligation of the Court simultaneously that, while admitting or registering the plaint or appeal, it should check whether the requisite court fee has been paid or not and, in case of deficiency or filing application under Section 149 CPC, pass necessary orders for compliance without keeping the application pending for an unlimited period of time. The function of the Court is to do substantial justice between the parties after providing an ample opportunity of hearing which is one of the most significant components and elements of a fair trial. The procedure is mere machinery and its object is to facilitate, not obstruct, the administration of justice. The CPC should, therefore, be considered liberally and should not be allowed to undermine substantial justice.

Conclusion: see above in analysis clause.

14. Lahore High Court
Asif Ali v. The State and another
Criminal Appeal No.1503/2023
Tauseef v. The State and another
Criminal Appeal No.1574/2023
Muhammad Waqar Adil v. Tauseef and another
Criminal Revision No.3600/2023
The State v. Asif Ali
Murder Reference No.42/203
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
<https://sys.lhc.gov.pk/appjudgments/2023LHC4812.pdf>

Facts: This single judgment will dispose of appeals filed by appellants against their convictions & sentences and Criminal Revision filed by complainant for enhancement of sentence as well as compensation amount and Murder Reference sent by trial court, as all the matters have arisen out of one and the same judgment passed by trial court.

Issues: i) Whether evidence of last seen requires strong corroboration?
 ii) Whether mere CDR without voice transcript is useful for the prosecution case?

Analysis: i) Evidence of last-seen being weakest type of evidence requires strong corroboration; in this regard, case of “ALTAF HUSSAIN versus FAKHAR HUSSAIN and another” (PLJ 2008 SC 687) can be safely referred.
 ii) Mere CDR without voice transcript, is of no avail to the prosecution; in this regard, case of “Mst. Saima Noreen vs The State and another” (2022 LHC 8798) can be referred.

Conclusion: i) Evidence of last-seen being weakest type of evidence requires strong corroboration.
 ii) Mere CDR without voice transcript, is of no avail to the prosecution.

15. Lahore High Court
Faisal v. The State
Criminal Appeal No.66322-J/2019
The State v. Faisal
Murder Reference No.194/2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
<https://sys.lhc.gov.pk/appjudgments/2023LHC4882.pdf>

Facts: This single judgment will dispose of criminal appeal filed by appellant against his conviction and sentence and murder reference sent by trial court, as both the matters have arisen out of one and the same judgment passed by Addl. Sessions Judge/trial court.

Issues: i) Whether any statement or application subsequently given or moved by complainant to police can be treated as first information under Section 154 Cr.P.C.?

- ii) Whether the FIR which is registered with unexplained delay loses its value?
- iii) Whether the witness who introduces dishonest improvement or omission for strengthening the case, can be relied?
- iv) Whether medical evidence is mere supportive/confirmatory type of evidence?
- v) When substantive evidence has been discarded, whether then motive becomes immaterial for conviction?
- vi) When ocular account has been disbelieved, then abscondance is of any help to the case of prosecution?

Analysis:

- i) The very first narration regarding the occurrence got recorded by complainant to police official is practically first information under Section 154 Cr.P.C., whereas any statement or application subsequently given or moved to police is statement under Section 161 Cr.P.C. Hence, in peculiar facts and circumstances of this case, statement got recorded by complainant to police at the spot is as a matter of fact “first information” which has been suppressed by the prosecution and not brought on record whereas application moved by the complainant at the most can be termed as “statement under Section 161 Cr.P.C.” and cannot be treated as “first information under Section 154 Cr.P.C.”
- ii) Aforementioned state of affairs clearly reflects that when police station was just 01-k.m. away from the spot, police came at the spot just after 20 minutes of the occurrence, accompanied the injured to hospital, obtained MLC also, in spite of recording statement of complainant at the spot of occurrence as well as conducting preliminary investigation did not register the case till 02.08.2015, then case has been registered with unexplained delay which further reflects that this time has been consumed for deliberation, consultation, concoction and tailoring false story after engaging and procuring witnesses and thereafter case has been registered through F.I.R. on the basis of application. Therefore, F.I.R. which is always considered as “cornerstone” has lost its value in the case and superstructure i.e. case of prosecution erected on the basis of this F.I.R. is bound to fall like house of cards.
- iii) Complainant after introducing dishonest improvements and omissions filed complaint with much delay and while appearing as witness, made dishonest improvements and deliberate omissions for strengthening the case. Similarly, the eye witness also introduced dishonest improvements as well as intentional omissions in his statement before the Court. By now it is well settled that witness who introduces dishonest improvement or omission for strengthening the case, cannot be relied.
- iv) So far as medical evidence is concerned, it is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury.
- v) Motive cuts both the ways, it can also be a reason for false implication, even otherwise, when substantive evidence has been discarded, then motive becomes immaterial for conviction.

vi) It is important to mention here that abscondance is not proof of the charge. Furthermore, when ocular account has been disbelieved, then abscondance is of no help to the case of prosecution.

- Conclusion:**
- i) Any statement or application subsequently given or moved by complainant to police cannot be treated as first information under Section 154 Cr.P.C.
 - ii) The FIR which is registered with unexplained delay loses its value.
 - iii) The witness who introduces dishonest improvement or omission for strengthening the case, cannot be relied.
 - iv) Yes, medical evidence is mere supportive/confirmatory type of evidence.
 - v) When substantive evidence has been discarded, then motive becomes immaterial for conviction.
 - vi) When ocular account has been disbelieved, then abscondance is of no help to the case of prosecution.

16. Lahore High Court

Ch. Zafar Muhammad Iqbal v. Mst. Kausar Parveen and others

R.F.A. No.9388 of 2020

Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed

<https://sys.lhc.gov.pk/appjudgments/2023LHC4770.pdf>

Facts: The appellant instituted a suit for recovery of damages on the basis of malicious prosecution, against the respondents by maintaining that defendants/ respondents filed miscellaneous applications by creating fictitious, fabricated and bogus occurrence and the respondents got lodged case FIR against the appellant. The learned trial Court vide ex-parte judgment and decree dismissed suit of the appellant. Hence, the instant appeal has been filed.

- Issues:**
- i) Whether every criminal prosecution/inquiry which ends in the clearing of opponent is per-se entitle the opponent to file a suit for compensation?
 - ii) What are necessary conditions to prove the case of malicious prosecution?
 - iii) How term prosecution can be defined for actionable for tort?
 - iv) Whether jealousy and grudges amount to reasonable cause to prove malicious prosecution?
 - v) How term malice can be defined to prove malicious prosecution?

Analysis:

- i) It is, by now, a settled law that every criminal prosecution/inquiry which ends in the clearing of opponent will not per-se entitle the opponent to file a suit for compensation. Successful proceedings initiated under this law required that the original proceedings must have been malicious and without cause. There is no cavil to the fact that every person in the society had a right to set in motion Government and Judicial machinery for protection of his rights but said person should not infringe the corresponding rights of others by instituting improper legal proceedings in order to harass by unjustified litigation.
- ii) In a reported case titled Muhammad Akram v. Mst. Farman Bibi (PLD 1990 SupremeCourt 28), Hon'ble Supreme Court has reckoned conditions that have to

exist for an action for malicious prosecution to be successful. The first two of these conditions are required for the issue of maintainability whereas the remaining three are to be proved; furthermore, the said conditions must exist conjointly. These conditions are as follows: • i) That the plaintiff was prosecuted by the defendant; • That the prosecution ended in plaintiff's failure; • That the defendant acted without reasonable and probable cause; • That the defendant was actuated by malice; • That the proceeding had interfered with plaintiff's liberty and had also affected her reputation; and finally • That the plaintiff had suffered damages.

iii) Touching to the first requirement that is the initiation of the criminal prosecution. Black's Law Dictionary defines the term 'prosecution' as "a criminal proceeding in which an accused person is tried". A prosecution exists where criminal charge is made before a judicial officer or tribunal. A malicious prosecution is an abuse of the process of the Court by wrongfully setting the law in motion on a criminal charge. To be actionable as a tort, the prosecution must have been malicious and terminated in favour of the plaintiff. The mere filing of a complaint before the police authorities on the basis of allegation was not a "legal wrong".

iv) Another ingredient is to see that whether the initiation of the prosecution was with a reasonable and probable cause. The circumstances between the parties are to be taken into consideration in order to determine the state of mind of the prosecutor and the defendant. However, jealousy and grudges held by defendants against plaintiffs will not amount to reasonable cause.

v) The next and striking ingredient for the action for compensation is that the criminal prosecution should have been initiated with malice. Black's Law Dictionary has defined the term 'malice' as wrongful intention. The term 'malice' has been elaborated and defined in the authoritative judgment reported as, *Abdul Rasheed v. State Bank of Pakistan* (PLD 1970 Karachi 344)... The term 'malicious prosecution' is defined in Black's Law Dictionary as "The institution of a criminal or civil proceeding for an improper purpose and without probable cause. In a case reported as *Muhammad Yousaf v. Abdul Qayyum* (PLD 2016 SC 478), the Apex Court of the country has defined malicious prosecution as "a tort which provides redress to those who have been prosecuted 'without reasonable cause' and with 'malice'....".

- Conclusion:**
- i) Every criminal prosecution/inquiry which ends in the clearing of opponent is not per-se entitle the opponent to file a suit for compensation.
 - ii) Necessary conditions to prove the case of malicious prosecution are mentioned under analysis No. ii.
 - iii) The term 'prosecution' as "a criminal proceeding in which an accused person is tried" and to be actionable as a tort, the prosecution must have been malicious and terminated in favour of the plaintiff.
 - iv) Jealousy and grudges do not amount to reasonable cause to prove malicious prosecution.

v) The term 'malice' means a wrongful intention and institution of a criminal or civil proceeding for an improper purpose and without probable cause.

17. Lahore High Court

Raza Khan. v Malik Muhammad Munir, etc.

R.F.A.No.42140 of 2022.

Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed

<https://sys.lhc.gov.pk/appjudgments/2023LHC4942.pdf>

Facts: Through this regular first appeal, the petitioner has challenged the vires of judgment and decree passed by trial court while dismissing the suit of the appellant for want of evidence invoking jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908.

Issues: i) What are the powers of Court under Rule 1(1), 1(2) of Order XVII, Code of Civil Procedure, 1908?
ii) Under what circumstances, the court must invoke jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908?

Analysis: i) Under Rule 1(1) of Order XVII, Code of Civil Procedure, 1908, the trial Court has been vested with powers to adjourn the case on showing sufficient cause by either of the party and from time to time adjourn the hearing of the suit and Rule 1(2) of the said Order empowers the Court seized of the matter to fix a day for further hearing of the suit subject to costs occasion by the adjournment.
ii) Where last opportunity to produce evidence is granted and the party has been warned of consequences, the court must invoke jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908 and enforce its order unflinchingly and unscrupulously without exception.

Conclusion: i) The trial Court has been vested with powers to adjourn the case on showing sufficient cause and to fix a day for further hearing of the suit subject to costs.
ii) The court must invoke jurisdiction under Order XVII, Rule 3 Code of Civil Procedure, 1908 where last opportunity is granted and the party has been warned of consequences.

18. Lahore High Court

Muhammad Yasin v. Muhammad Ismail etc.

Civil Revision No.62703 of 2023

Mr. Justice Shahid Bilal Hassan

<https://sys.lhc.gov.pk/appjudgments/2023LHC4763.pdf>

Facts: The petitioner instituted a suit for declaration, cancellation of documents and perpetual injunction against respondents/defendants, plaint whereof was rejected by the learned trial Court under Order VII, Rule 11(d) of Code of Civil Procedure, 1908. Appeal against the said order was dismissed vide impugned judgment and decree; hence, the instant revision petition.

- Issues:**
- i) Whether Order VII, Rule 11 of the Code of Civil Procedure, essentially requires the Court to reject the plaint without recording evidence if it simply appears from its contents to be barred by limitation?
 - ii) Whether the expression ‘barred by any law’ includes the law of limitation?
 - iii) Is Order VII, Rule 11, C.P.C., is an exhaustive provision of law?

- Analysis:**
- i) The question of limitation being a mixed question of law and facts ought to have been decided after recording evidence. However, no evidence is required to be recorded where plain reading of the plaint clarifies that the suit is patently barred by limitation. Only relevant facts need to be looked into for deciding an application under Order VII, Rule 11 of C.P.C., are the averments in the plaint and other material available on record, which on its own strength is legally sufficient to completely refute the claim of plaintiff.
 - ii) The bar of limitation is traceable to the Limitation Act, therefore, the expression ‘barred by any law’ includes the law of limitation. The clause (d) of Order VII, rule 11 of C.P.C., is applicable where the suit is time-barred.
 - iii) A suit may be specifically barred by law under the vivid terms of clause (d) of Rule 11, Order VII of the Code of Civil Procedure, 1908, but even in a case where a suit is not permitted by necessary implication of law in the sense that a positive prohibition can be spelt out of legal provisions, the Court has got an inherent jurisdiction to reject the plaint at any stage of trial and in such a situation formalities should be avoided to reject it.

- Conclusion:**
- i) The mandate of law as contained in Order VII, Rule 11 of the Code of Civil Procedure, essentially requires the Court to reject the plaint without recording evidence, which from its contents appears to be barred by limitation.
 - ii) The expression ‘barred by any law’ includes the law of limitation.
 - iii) Order VII, Rule 11 of C.P.C., is not an exhaustive provision of law.

19. Lahore High Court
Bilawal Hussain v Mst. Farzana Kausar
Civil Revision No.63085 of 2019
Mr. Justice Shahid Bilal Hassan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4958.pdf>

- Facts:** The petitioner/defendant has filed the Civil Revision under section 115 of C.P.C, against the decision of lower courts wherein, suit of plaintiff/respondent for possession through specific performance of an agreement to sell with permanent injunction was decreed against petitioner/defendant and his appeal against the decision of the trial court was dismissed.

- Issues:**
- i) Whether non- appearance of main witness attracts the adverse presumption of Article 129(g) of the Qanun-e-Shahadat Order, 1984?
 - ii) Under what circumstances, High Court can undo the concurrent findings of the lower courts?

Analysis: i) The non-appearance of the main witness attracts Article 129(g) of the Qanun-e-Shahadat Order, 1984 as the best evidence has been withheld arising out adverse presumption that if the said witness would have appeared in the witness box, he would not have stood and successful after facing the cross examination.
 ii) High Court has been vested with authority and ample power to undo the concurrent findings of lower courts when both have failed to adjudicate upon the matter by appreciating law on the subject and misread the evidence.

Conclusion: i) The non-appearance of the main witness attracts the adverse presumption of Article 129(g) of the Qanun-e-Shahadat Order, 1984.
 ii) High Court can undo the concurrent findings of the lower courts when both have failed in appreciation of law and misread the evidence.

20. Lahore High Court
Faqir Syed Anwar Ud Din (deceased) through L.Rs. v. Syed Raza Haider and others
R.S.A. No.68 of 2017
Mr. Justice Shahid Bilal Hassan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4964.pdf>

Facts: Through this appeal and connected appeal the appellants assailed the judgments and decrees passed by learned courts below whereby suit against the appellants were decreed by the trial court and their appeals were dismissed by the appellate court.

Issues: i) Whether beneficiary is under heavy burden to prove the valid execution of the general power of attorney and other sale transactions where the principal is of unsound mind?
 ii) Where subsequent vendee conducted no inquiry whatsoever with regards to title of the property, whether he would be deemed to have purchased property for value, in good faith and without notice of original contract?
 iii) Whether the concurrent findings, on facts, can be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908?

Analysis: i) All the P.Ws. deposed that Mst. Yasmin Begum was of unsound mind before contracting marriage and all the transactions regarding the transfer of property were made while she was suffering from mental illness and being of an unsound mind and was unable to manage herself and that all the transactions germane to transfer of her property were outcome of fraud. The beneficiary was under heavy burden to discharge the onus that all the transactions were performed with free will and consent of the principal but in the present case, it has been established by the respondent No.1 that Mst. Yasmin Begum was not in a position to manage her property. The appellants produced only solitary witness and the said D.W. did not

depose a single word regarding the factum that at the time of execution of general power of attorney, Mst. Yasmin Begum was not suffering from mental infirmity and she was of sound mind at that time. It has been established on record that Mst. Yasmin Begum was suffering from epileptic disease from her childhood and was not in a position to manage her property or form a rational judgment as to effect of any contract on her interest. The deceased predecessor of the appellants being beneficiary was under heavy burden to prove the valid execution of the general power of attorney and other sale transactions but he failed in doing so.

ii) So far the claim of the appellant in connected appeal with regards to bona fide purchaser without notice is concerned, it is observed that protection under section 27(b) of the Specific Relief Act, 1877 is not available to him, because simple denial was not sufficient to discharge the onus, rather he should have proved good faith and lack of knowledge after reasonable care. It is a settled law that where subsequent vendee conducted no inquiry whatsoever with regards to title of the property in question, he would not be deemed to have purchased property in question for value, in good faith and without notice of original contract.

iii) Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908.

Conclusion: i) Beneficiary is under heavy burden to prove the valid execution of the general power of attorney and other sale transactions where the principal is of unsound mind.

ii) Where subsequent vendee conducted no inquiry whatsoever with regards to title of the property, he would not be deemed to have purchased property for value, in good faith and without notice of original contract.

iii) The concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908.

21. Lahore High Court
Qadeer Ahmad Toor v. Mushtaq Ahmad and others
Civil Revision No. 63332 of 2023
Mr. Justice Shahid Bilal Hassan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4952.pdf>

Facts: The petitioner instituted a suit for declaration with possession through partition along with permanent injunction against the respondents. The learned trial Court vide impugned judgment and decree dismissed suit of the petitioner. The appeal preferred by the petitioner against the said judgment and decree was also dismissed vide impugned judgment and decree by the learned appellate Court; hence, the instant revision petition.

Issues:

- i) Whether it is obligatory in all cases to state particulars with dates and items necessary in the pleadings?
- ii) Whether it is necessary to provide the description of the property in the plaint where the subject matter of the suit is immovable property?
- iii) Whether the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis:

- i) Order VI, Rule 4 of the Code of Civil Procedure, 1908 provides that, ‘in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items necessary) shall be stated in the pleadings.’ However, the petitioner could not plead and prove by leading confidence inspiring and trustworthy evidence to prove the alleged fraud.
- ii) Besides, the petitioner could not describe the detail of property allegedly owned by him, which was necessary and essential as required by Order VII, Rule 3, Code of Civil Procedure, 1908, which reads: -
‘Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.’
- iii) It is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion (..) The impugned judgments and decrees do not suffer from any infirmity, rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908

Conclusions:

- i) Yes, it is necessary in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence to state its particulars with dates and items necessary in the pleadings.
- ii) Yes, where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it.
- iii) Yes, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908 unless the impugned judgments and decrees suffer from any infirmity or the law on the subject has not rightly been construed and appreciated.

22. Lahore High Court
The State v. Ali Akbar etc.
CrI. Revision No. 56169 of 2023
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
<https://sys.lhc.gov.pk/appjudgments/2023LHC4710.pdf>

Facts: Through the instant Criminal Revision the petitioner has challenged the legality

and validity of the order passed by the learned Judge, Anti-Terrorism Court, whereby the request of the investigating officer for grant of 20-days physical remand of respondent No.1 was turned down and he was sent to judicial lockup for 14-days.

- Issues:**
- i) Whether remand is to be granted mechanically at the request of the police?
 - ii) Whether sub-section (2) of Section 21- E of the Anti-Terrorism Act, 1997 does authorize the police to ask for police custody for a further period after the expiry of the first physical remand for not less than 15 days and more than 30 days?
 - iii) If one case is registered against the accused in which, during the investigation, it is found that he has committed more than one offence, whether it will be treated as one investigation?
 - iv) Whether for each offence in a case/FIR, a separate police remand can be granted?

- Analysis:**
- i) It is an established principle of law that remand is not to be granted mechanically at the request of the police; instead, the Magistrate is expected to perform its duty after judicious application of mind.
 - ii) The mandate of Sub-section (1) of Section 21-E of the AntiTerrorism Act, 1997 is that when it is not possible to complete the investigation within 24 hours, then it is the duty of the Police to produce the accused before the court. Police cannot detain any person in their custody beyond that period. Sub-Section (1) says that if the accused is produced before the court, then the court can give a remand to the police for investigation not less than 15 days and not more than 30 days. But the proviso of Sub-section (2) of Section 21- E of the Anti-Terrorism Act, 1997 does not authorize the police to ask for police custody for a further period after the expiry of the first physical remand for not less than 15 days and more than 30 days. Instead, it gives discretion to the court if further evidence may be available and no bodily harm has been or will be caused to the accused; the court can authorize the detention of the accused person in custody of police for a period to the court's satisfaction. The whole purpose is that the accused should not be detained for more than 24 hours, and subject to the expiry of the first police remand, it can be extended up to 90 as the case may be. Therefore, the reading of sub-Section 2 with the proviso of Section 21-E of the Anti-Terrorism Act, 1997, clearly transpires that the incumbent should be, in fact, under the detention of police for investigation for the period to the court's satisfaction.
 - iii) It is relevant to mention here that if one case is registered against the accused in which, during the investigation, it is found that he has committed more than one offence, then it will be treated as one investigation.
 - iv) For each offence, a separate police remand cannot be granted. If that is permitted, then the police can go on adding some crime or the other of a severe nature at various stages and seek further detention in police custody repeatedly.

- Conclusion:**
- i) Remand is not to be granted mechanically at the request of the police; instead, the Magistrate is expected to perform its duty after judicious application of mind.

ii) Sub-section (2) of Section 21- E of the Anti-Terrorism Act, 1997 does not authorize the police to ask for police custody for a further period after the expiry of the first physical remand for not less than 15 days and more than 30 days. Instead, it gives discretion to the court if further evidence may be available and no bodily harm has been or will be caused to the accused; the court can authorize the detention of the accused person in custody of police for a period to the court's satisfaction.

iii) If one case is registered against the accused in which, during the investigation, it is found that he has committed more than one offence, then it will be treated as one investigation.

iv) For each offence in a case/FIR, a separate police remand cannot be granted.

23. Lahore High Court
Mansha Ali v. The State, etc.,
CrI. Rev. No.64149 of 2023,
Miss. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural.
<https://sys.lhc.gov.pk/appjudgments/2023LHC4873.pdf>

Facts: Through the instant Criminal Revision filed under Sections 435/439-A of Cr.P.C., read with section 561-A of Cr.P.C., the petitioner has impugned the order passed by the learned Administrative Judge Anti-Terrorism Courts, whereby the request of the investigating officer for physical remand of the petitioner in case FIR registered under Section 427, 324, 186, 353, 148, 149 P.P.C., 7-ATA and Section 35 LDA was accepted allowing physical remand of petitioner for 14-days.

Issues: i) What is the mandate of Section 21-E of Anti-Terrorism Act, 1997, regarding passing the order of initial remand?
 ii) What is the mandate of Section 21-E of Anti-Terrorism Act, 1997, regarding passing the order of second remand?

Analysis: i) As mandated in Section 21-E of Anti-Terrorism Act, 1997, the order of remand, either judicial custody or police custody, shall not be passed mechanically. Since such detention deprives the personal liberty guaranteed under Article 10 (2) of the Constitution of the Islamic Republic of Pakistan, therefore, while passing an order of remand, the learned Administrative Judge Anti-Terrorism Courts must apply his mind to the entries in the police file, representation of the accused, and other facts and circumstances.
 ii) There cannot be any detention in police custody only for the reason that more offences, either severe or otherwise, are added during later stages of the investigation. If the collection of evidence was completed on record after the expiry of the initial period of physical custody in connection with the case investigation, then physical remand would be declined. Otherwise, the Court can remand him to such custody during the second period as provided under Section 21-E (2) of Anti-Terrorism Act, 1997.

- Conclusion:** i) As per mandate of Section 21-E of Anti-Terrorism Act, 1997, the Administrative Judge Anti-Terrorism Courts will pass the order of remand only on the satisfaction that such remand is justified.
- ii) The proviso of Section 21-E (2) of the Anti-Terrorism Act, 1997 gives discretion to the court that if further evidence may be available and no bodily harm has been or will be caused to the accused, the court can authorize the detention of the accused person in custody of police for a period to the court's satisfaction.

24. Lahore High Court
Usman Ali Maqbool v. The State & another
Crl.Misc.No.47792-B of 2023
Mr. Justice Ch. Abdul Aziz
<https://sys.lhc.gov.pk/appjudgments/2023LHC4918.pdf>

Facts: Petitioner seeks post-arrest bail in case FIR registered under Sections 302,324,337-F (v) & 34 PPC.

- Issues:** i) When after the registration of a cross-version case accused is entitled to relief of bail?
- ii) Whether ipse-dixit of police could be considered for granting post arrest bail to accused?
- iii) Whether video clips have any legal admissibility and can be taken into consideration even at bail stage?

Analysis: i) The procedural relief of bail is generally granted in cases of two versions in the absence of some extraordinary circumstances, more importantly when the counter stance of the accused about the same incident is supported by some record and investigation. The courts lean in favour of extending the concession of post-arrest bail to an accused in cases of cross-version on the premise that in such like cases it is always in fitness of things to leave the question of initiation of aggression to the trial court where it can best be decided after in-depth analysis of the evidence.

ii) Before dilating upon the second ground of declaration of innocence pronounced in favour of petitioner by the police, it is deemed appropriate firstly to observe here that in routine ipse-dixit of the police without evaluating the supporting reasoning is not considered sufficient for the grant of post-arrest bail in a homicide case. Such opinion in favour of an accused can still be used for enlarging him on post-arrest bail if it is based on some confidence inspiring material by examining it on the touchstone of tentative assessment. The courts are not oblivious of the fact that vested interests, defective investigations and dishonest opinions have eroded and polluted the investigation process of criminal cases in our country. At the same time, the vengeance of litigants prompts them to grill some innocent persons along with actual offenders in criminal cases and fair police investigation is the only tool left for lifting veil from the actual facts.

iii) In the instant case, it is observed from record that petitioner was declared innocent on the basis of visuals of incident captured in CCTV camera installed adjacent to the crime scene. These visuals were also forwarded to PFSA and it was reported that the clips are free from editing and tampering. Needless to mention here that such video clips have legal admissibility in consonance with Articles 46-A & 164 of Qanun-e- Shahadat Order, 1984, thus can be taken into consideration even at bail stage.

- Conclusions:** i) The procedural relief of bail is generally granted in cases of two versions in the absence of some extraordinary circumstances, more importantly when the counter stance of the accused about the same incident is supported by some record and investigation.
- ii) Ipse-dixit of police in favour of an accused can be used for granting post-arrest bail if it is based on some confidence inspiring material by examining it on the touchstone of tentative assessment.
- iii) Video clips can be taken into consideration at bail stage being legally admissible in consonance with articles 46-A and 164 of Qanun-e-shahadat order 1984

25. Lahore High Court
Muhammad Zahid Saleem v. Secretary, Government of Punjab etc.,
Writ Petition No. 66980 of 2017,
Mr. Justice Abid Aziz Sheikh.
<https://sys.lhc.gov.pk/appjudgments/2023LHC4923.pdf>

Facts: Through this constitutional petition, the petitioner impugned four orders including the order declining his representation for grant of pensionary benefits against the post of “Assistant Finance” (BS-16), the order withdrawing his promotion as “Assistant” (BS-11), the Corrigendum modifying his retirement to the effect of mentioning his retirement against the post of “Senior Clerk” and the order holding him eligible to get his pensionary benefits of “Senior Clerk”. The petitioner has also sought his pensionary benefits against the post of “Assistant Finance”(BS-16).

Issue: If the promotion order is passed by competent authority in absence of allegations of fraud, misrepresentation or use of illegal means on part of the promotee in promotion proceedings, whether such promotion order can be withdrawn and promotee may be deprived of his pensionary benefits at belated stage mere on basis of defective departmental proceedings?

Analysis: When there are no allegations of fraud, misrepresentation or use of illegal means on part of the promotee in promotion proceedings and promotion order is also passed by the Competent Authority, then such promotion order is protected under the principles of “vested right”, “past & closed transaction” and “*locus poenitentiae*”.

Conclusion: If the promotion order is passed by competent authority in absence of allegations of fraud, misrepresentation or fault on part of the employee in promotion proceedings, then promotion order cannot be withdrawn at belated stage merely on basis of defective departmental proceedings.

26. Lahore High Court
Hamza Sugar Mills Ltd. & others v. Federation of Pakistan & others
I.C.A No.61692 of 2021
Mr. Justice Shahid Karim, Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2023LHC4778.pdf>

Facts: The challenges were made primarily to the Price Control and Prevention of Profiteering & Hoarding Order, 2021 issued under the powers conferred on the Federal Government by Sections 3 and 4 of Price Control and Prevention of Profiteering and Hoarding Act, 1977. In addition to the above, the Schedule to the 1977 Act has also been substituted. Under Section 3(b) of the 2021 Order in respect of the commodities specified in Part II of the Schedule to the 1977 Act (which include sugar) the business of determining price of sugar stands allocated to the Secretary, Ministry of National Food Security and Research who is authorized to exercise the powers of the Controller General under the 2021 Order. This litigation includes a number of Intra Court Appeals arising out of a judgment passed by a learned Single Judge of this Court as well as constitutional petitions which were filed on a subsequent time and raised a common issue of law.

Issues:

- i) What is primary purpose of Article 151 of the Constitution?
- ii) Whether subject of price control and fixation of price of essential commodities inhere in entry 13 in Part II, Fourth Schedule of Constitution?
- iii) What is underlying theme of Entry 13 in Part II, Fourth Schedule of Constitution?
- iv) Whether the field of “food” is within legislative competence of Provincial Assembly or Parliament and when it becomes inter-provincial matter?
- v) Whether the intention of Article 151 of Constitution is to have uniformity in prices across all Provinces?
- vi) Whether Price Control and Prevention of Profiteering and Hoarding Act, 1977 is existing law and could have been adapted for purposes of Province of Punjab?

Analysis: i) Article 151 of Constitution relates to Inter-Provincial trade and clearly states that the trade, commerce and intercourse throughout Pakistan shall be free. This is the essential and primary purpose of Article 151 and it cannot be extended to encapsulate powers which are not envisaged and which do not reside in either the Federal Government or a Provincial Government. By clause 3, a Provincial Assembly and a Provincial Government has been enjoined from making any law or taking any executive action prohibiting or restricting the entry into or the export from the Province of goods of any class or description and by paragraph

(b) of clause 3, a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former goods or which, in the case of goods manufactured or produced outside the Province discriminates between goods manufactured or produced in any area in Pakistan and similar goods manufactured or produced in any other area in Pakistan.

ii) It is not correct that subject of price control and fixation of prices of essential commodities to inhere in Entry 13 as the subject matter of this Entry is essentially regarding Inter-Provincial matters and has direct nexus with Article 151 of the Constitution...

iii) Entry 13 reads “inter-provincial matters and coordination”. At first blush it seems that the Entry targets matters which arise amongst Provinces and which require resolution by a neutral arbiter. There may be a wide variety of matters on which the Provinces may have a falling out and lest those matter get out of hand, the Federal Government may intervene which, by Entry 13, is its constitutional duty. But the underlying theme of Entry 13 is for an inter-provincial matter to arise in order to clothe the Federal Government the power to step in. That is, one Province shall have to raise a grievance against another which then gives rise to an inter-provincial matter. The Parliament may enact a law to deal with such a situation but it cannot, under a misplaced notion, have a legislative blank check to encroach upon Provinces’ primary powers to legislate on a field of activity.

iv) The statutory wording makes it clear that the field of ‘food’ is within the legislative competence of a Provincial Assembly. By necessary implication therefore, the price control of foods as an essential commodity is also within the Province’s competence. This flows from the holding of superior Courts as well. There can be no contention that if only a Provincial Assembly can legislate upon the subject matter of ‘food’, all ancillary matters including price control would be included in the broad power so conferred. The Parliament cannot arrogate to itself the power of price control in the guise of Entry 13 (which is an entry having unspecific contours) while a specific subject-matter lies within the power of a Provincial Assembly. If this were allowed to the Parliament, the entire edifice of federalism and provincial autonomy will have dissipated. It can only transition into an inter-provincial matter if another Province raises serious objections to it on plea that the price affects businesses adversely in that Province. Apart from this, the subject-matter of food and its allied matters such as price fixation remain within the armoury of powers of a Provincial Assembly.

v) To have uniformity in prices across all Provinces is not the intention of Article 151 nor is there any such power conferred upon the Parliament by virtue of Entry 13. In a given situation, the manufacturers and producers of essential commodities in the Province of Punjab may not be dealing with their commodities for export to other Provinces. Can it conceivably be held that the Parliament would still have the power to regulate the prices of commodities which do not have any Inter Provincial connotation. The answer is clearly in the negative and what is conceived by Article 151 of the Constitution is to prohibit making of laws which

constrict the freedom of trade, commerce or intercourse between one Province and another. By Article 151, the power of the Provinces and the Provincial Governments is limited and they cannot make laws which prohibit or restrict the entry into or export from the Province of goods of any class or description.

vi) In fact the 1977 Act is clearly not an existing law under the 1973 Constitution and could not have been adapted for the purposes of Province of Punjab. That is why perhaps it was allowed to lapse as a binding law at the end of its life. In the meantime the Province promulgated the Punjab Prevention of Speculation in Essential Commodities Act, 2021 as well which was done to provide for prevention of speculation in essential commodities to curb artificial price hike and profiteering in the best public interest. Once again, this was done under the powers conferred upon the Province of Punjab by the Constitution. The Province of Punjab also brought in the Punjab Prevention of Hoarding Act, 2020 to provide for the prevention of hoarding in respect of scheduled articles.

- Conclusion:**
- i) Primary purpose of Article 151 of Constitution is that the trade, commerce and intercourse throughout Pakistan shall be free.
 - ii) Subject of price control and fixation of prices of essential commodities does not inhere in Entry 13 as the subject matter of this Entry is essentially regarding Inter-Provincial matters and has direct nexus with Article 151 of the Constitution.
 - iii) The underlying theme of Entry 13 is for an inter-provincial matter to arise in order to clothe the Federal Government the power to step in. That is, one Province shall have to raise a grievance against another which then gives rise to an inter-provincial matter.
 - iv) The field of “food” is within legislative competence of Provincial Assembly. It can only transition into an inter-provincial matter if another Province raises serious objections to it on plea that the price affects businesses adversely in that Province. Apart from this, the subject-matter of food and its allied matters such as price fixation remain within the armoury of powers of a Provincial Assembly.
 - v) It is not the intention of Article 151 of Constitution to have uniformity in prices across all Provinces.
 - vi) Price Control and Prevention of Profiteering and Hoarding Act, 1977 is not existing law and could not have been adapted for purposes of Province of Punjab.

27. **Lahore High Court**
Commissioner Inland Revenue, Lahore Bench, Lahore v. Unique Cycle Industry.
STR No.72126/2022 etc.
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
<https://sys.lhc.gov.pk/appjudgments/2023LHC4896.pdf>

Facts: Through this Sales Tax Reference along with other Applications the applicant assailed the order of the Appellate Tribunal Inland Revenue Lahore (Appellate Tribunal) in connection with the observations that the conditions (i) & (ii) of SRO 670(1)/2013 are independent of each other.

- Issues:**
- i) Whether Input-Output Co-efficient Organization (IOCO) certificate is only one of the mode(s) for determination of input/put ratios for claiming or extending the privilege of zero-rating facility under SRO No.670(1)/2013?
 - ii) Whether subject matter conditions of SRO 670(1)/2013 exist and operate independent of each other?
 - iii) Whether reading of SRO No.670 (1)/2013 in bits and pieces would contravene the intent and purpose of statutory instrument?

- Analysis:**
- i) IOCO certificate is only one of the mode(s) for determination of input/put ratios. It implies that factum of determination of input/put ratios is the fundamental-cum-primary condition for claiming or extending the privilege of zero-rating facility under SRO No.670(1)/2013. It is evident from perusal of sub-clause (b) of condition (ii) of SRO No.670(1)/2013 that requirement of determination of input/output ratios would be deemed fulfilled if Commissioner had approved the declaration of input/put ratios or determination thereof is otherwise available in terms of the alternatives provided in sub-clause (b). And if Commissioner was not satisfied with alternatives available or IOCO certificate was not readily available, sub-clause (c) provides transitory/stop-gap arrangement...
 - ii) Subject matter conditions have had to be read and construed jointly. If condition (ii) is treated as separate and independent then the requirement of determination of input/output ratios, if not achieved otherwise, had to be carried out in the light of IOCO certificate, which appears to be penultimate / conclusive method of determination of input/out ratios for the purposes of extending benefit of SRO No.670(1)/2013. Sub-clause (c) of condition (ii) merely provided transitory deferment of the determination of input/ output ratios, which sub-clause does not conclusively provide for the effect of non-availability of IOCO certificate. And reading or treating non-provisioning of certificate, after lapse of temporarily extended period, per se as extinguishment of the requirement of determination of input/output ratios in terms of condition (i) is offensive to the scope, purpose and existence of SRO No.670(1)/2013. Condition (i) is primary condition for seeking benefit under SRO No.670(1)/2013 and condition (ii) is ancillary thereto, a subordinate condition. Declaring condition (ii) as mutually exclusive would imply redundancy of condition (i) which is unwarranted.
 - iii) Reading of SRO No.670(1)/2013 in bits and pieces would contravene the intent and purpose of statutory instrument, which purpose is grant of concession but subject to scrutiny qua determination of input/output ratios of the manufacturer.

- Conclusion:**
- i) Yes, Input-Output Co-efficient Organization (IOCO) certificate is only one of the mode(s) for determination of input/put ratios for claiming or extending the privilege of zero-rating facility under SRO No.670(1)/2013.

- ii) The subject matter and conditions of SRO 670(1)/2013 do not exist and operate independent of each other.
- iii) Yes, reading of SRO No.670 (1)/2013 in bits and pieces would contravene the intent and purpose of statutory instrument.

28. Lahore High Court
National Bank of Pakistan v. Brite Chemicals, etc.
R.F.A. No.1538/2015
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
<https://sys.lhc.gov.pk/appjudgments/2023LHC4910.pdf>

Facts: Through this Regular First Appeal, legality of judgment is challenged, whereby suit for recovery of overdue finance, instituted by Financial Institution was decreed with costs of suit to the extent of some respondents and suit against other respondents was dismissed.

Issue: Whether cost of funds can be declined on the premises that suit was instituted under Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 but at the time of decree the applicable law was Financial Institutions (Recovery of Finances) Ordinance, 2001 and whether retrospective effect to section 3 of the Ordinance, 2001 can be given?

Analysis: ... the effect of section 3 of Ordinance of 2001 is to be considered while appreciating the scope, mandate and effect of section 29 of the Ordinance of 2001. In terms of sub-section (2) of section 29 of Ordinance, 2001, no decree can lawfully be passed under the Act, 1997 with respect to mark-up-based finance and only interest-bearing- loans can be decreed under section 15 of Act of 1997. Hence, if at all decree had to be passed regarding mark-up-based finance, in all possibility, it had to be under Ordinance of 2001. Section 29 is the bridge for dealing with adjudication of claims of mark-up-based finances under the provisions of Ordinance of 2001, notwithstanding institution of suits under provisions of Act of 1997.

Conclusion: See above in analysis clause.

29. Lahore High Court
The Commissioner Inland Revenue, RTO, Lyalpur Zone, Faisalabad v. M/s M.M Enterprises (Munir Ahmad), Faisalabad
ITR No.77156/2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muhammad Asim Hafeez
<https://sys.lhc.gov.pk/appjudgments/2023LHC4903.pdf>

Facts: This and connected Income Tax Reference Applications are directed against orders of Appellate Tribunal Inland Revenue Lahore.

Issue: Whether those traders of yarn, who claim and intend to take advantage of proviso to 45A of Part IV, second Schedule, are entitled to claim benefit of withholding tax deductions under clause (a) of sub-section (1) of section 153 of the Ordinance of 2001?

Analysis: Answer is inherently provided in the proviso to 45A of Part IV, second Schedule of the Ordinance of 2001. No deduction of withholding of tax under clauses (a) and (b) of sub-section (1) of section 153 of the Ordinance of 2001 is permissible. This restraint imposed specifically excludes incidence of withholding tax deductions under clause (a) of sub-section (1) of section 153 of the Ordinance of 2001. Since no deduction was permissible therefore no question of classification of such deduction as final tax, in terms of sub-section (3) of Ordinance, 2001 arises...

Conclusion: The restraint imposed under proviso to clause 45A of Part IV of second Schedule, specifically excludes incidence of withholding tax deductions under clause (a) of sub-section (1) of section 153 of the Ordinance of 2001.

30. Lahore High Court
Muhammad Adnan v. The State
Cr. Appeal No.206 of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Muhammad Waheed Khan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4839.pdf>

Facts: Through the instant appeal, the appellant challenged conviction and sentence awarded to him by the learned Addl. Sessions Judge, vide judgment in case FIR registered u/s 9 (c) of the Control of Narcotic Substances Act, 1997, whereby he was convicted u/s 9 (c) of the CNSA, 1997 and sentenced to rigorous imprisonment for six years and six months alongwith fine of Rs.30,000/-, in default thereof, to further undergo six months simple imprisonment.

Issues: i) Under what two components/limbs prosecution is duty bound to prove a case under Control of Narcotic Substance Act, 1997?
 ii) To what extent the accused can be convicted keeping in view the principle of proof of safe custody and transmission of sample parcels and the case property?

Analysis: i) A case under the Control of Narcotic Substances Act, 1997 contains two components/limbs i.e. firstly, the prosecution is bound to establish the safe custody and safe transmission from the place of recovery of seized drug by the police, including separation of representative parcel(s) of the seized drug and its despatch to the testing laboratory and secondly, the chain of custody of the parcel(s) containing the 'case property' is also pivotal, and the prosecution is also supposed to prove its safe custody as far as the same remained with the police and then despatched to the trial Court as a 'case property' intact, and any break in the chain of custody or lapse in the control of possession of the sample(s) containing

case property causes doubt on its safe custody and safe transmission to the Court of law.

ii) Meaning thereby that an important link is missing regarding the safe custody of the ‘case property’ and we have reached to an irresistible conclusion that the prosecution remained failed to prove its case to the extent of parcels containing the ‘case property’. Hence, in all eventualities the narcotic containing the ‘case property’ cannot be used against the appellant. So, he cannot be held guilty of the quantity i.e. 3011 grams of charas and as such conviction and sentence awarded to him by the learned trial Court u/s 9 (c) of the Act *ibid* cannot be allowed to stand, rather he would be convicted and sentenced to the extent of samples consisting of 54/54 grams and 51 grams (total 159 grams), which were received in the Punjab Forensic Science Agency (PFSA) and the same were tested as positive through report Ex-PG. Therefore, the appellant is held responsible for having only to the extent of three ‘sample parcels’ weighing 156 grams in his possession.

Conclusion: i) Prosecution is duty bound to prove a narcotic case under two components/limbs i.e. firstly safe custody and safe transmission of the seized drug and secondly chain of safe custody of parcels.

ii) In narcotic case an accused cannot be held responsible for narcotic containing the case property, safe custody of which has not been proved by the prosecution and thus accused is responsible only for possessing sample parcels, safe custody and transmission of which has otherwise been proved.

31. Lahore High Court
Muhammad Akram v. The State etc.
CrI. Misc. No. 20609-B/2023
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2023LHC4974.pdf>

Facts: Through this application under section 497 Cr.P.C., the Petitioner seeks post-arrest bail in case registered for offences under sections 376 & 292 PPC.

Issues: i) What are relevant provisions of Cr.P.C. for collecting medical evidence regarding offences of rape etc.?
 ii) Whether victim of rape can be asked question in cross-examination and any other evidence can be led about her alleged “general immoral character” to impeach her credibility?
 iii) Whether two-finger virginity test for medico-legal examination of a victim of rape is permissible under law?

Analysis: i) In Pakistan, under section 164-A of the Code of Criminal Procedure 1898, the victim is required to undergo a medical examination as a part of the investigation relating to an offence committing rape, unnatural offence or sexual abuse or any attempt thereof. Section 164-B Cr.P.C. stipulates that DNA samples, where practicable, shall be collected from the victim with their consent or with the

approval of their natural or legal guardian and from the accused during the medical examination and sent to a forensic laboratory at the earliest for analysis. All the reports with the doctor's opinion are then used in the court along with the oral testimony of the doctor. However, the courts in our country have also denounced the virginity test.

ii) In *Atif Zareef*, the Supreme Court observed that the courts had been allowing opinion evidence of medical experts based on two-finger tests, presumably under Article 151(4) of the *Qanun-e-Shahadat, 1984* ("QSO") [section 155(4) of the erstwhile *Evidence Act, 1872*] which provided that "when a man is prosecuted for rape or an attempt to ravish, it may be shown that the victim was of generally immoral character to impeach her credibility." However, the Federal Shariat Court declared that provision repugnant to the Injunctions of Islam, and then the *Criminal Law Amendment (Offences Relating to Rape) Act, 2016* omitted it. A subsequent enactment, section 12(3) of the *Punjab Witness Protection Act, 2018*, specifically ordains that the court shall forbid a question relating to the past sexual behavior of a victim. Article 146 of QSO also obligates the court to disallow any indecent or scandalous questions unless they relate to the fact-in-issue. The cumulative effect of all these provisions is that putting questions to a rape victim in cross-examination and leading any other evidence about her alleged "general immoral character" to impeach her credibility is prohibited.

iii) Parliament has enacted the *Anti-Rape (Investigation and Trial) Act (XXX of 2021)* to accord statutory recognition to the dicta in *Atif Zareef* and *Sadaf Aziz* cases. Section 13(1) thereof expressly prohibits two-finger virginity testing for the medico legal examination of a victim and adds that no probative value shall be attached to it. Section 13(2) states that any evidence that the victim is generally immoral shall be inadmissible in relation to scheduled offences.

- Conclusion:**
- i) Provisions of sections 164-A & 164-B of Cr.P.C. relate to collection of medical evidence regarding offences of rape, unnatural offence or sexual abuse or any attempt thereof.
 - ii) Putting questions to a rape victim in cross-examination and leading any other evidence about her alleged "general immoral character" to impeach her credibility is prohibited.
 - iii) Two-finger virginity test for medico-legal examination of a victim of rape is prohibited under section 13(1) of *Anti-Rape (Investigation and Trial) Act (XXX of 2021)*.

32.

Lahore High Court

Muhammad Azhar Abbasi and Masood Ahmad Abbasi v. Municipal Corporation and others

Writ Petition No. 3222 of 2021

Mr. Justice Jawad Hassan

<https://sys.lhc.gov.pk/appjudgments/2023LHC4723.pdf>

Facts:

The Petitioners have filed petition under Article 199 of the Constitution of Islamic

Republic of Pakistan, 1973 with prayer that the Respondents be directed to pay current and future arrears and retainership/professional fee of the petitioners till they avail duties of the petitioners as legal advisors.

Issue: Whether mere recommendation/nomination of Administrator Municipal Corporation for appointment of a legal advisor, without compliance of Rule 4 of the Punjab Local Government Legal Advisors Rules, 2003, creates any vested right?

Analysis: As per requirement of Rule 4(1) of the Punjab Local Government Legal Advisors Rules, 2003, a local government, desirous to engage a legal advisor on regular basis, shall invite applications through advertisement at least in two national daily newspapers. The candidates as per Rule 4(2) of the Rules *ibid* are advised to address their applications to the local government concerned and also to forward a copy thereof alongwith annexure to the Government of the Punjab in the Law & Parliamentary Affairs Department. In terms of Rule 4(3) of the Rules *ibid*, the local government concerned shall forward all applications of the candidates alongwith its recommendations to Government of the Punjab, which are placed before the Selection Committee constituted under Rule 4(4) of the Rules *ibid*. Further, Rule 4(5) of the Rules *ibid* provides that the committee shall approve the name of advocate to be appointed as legal advisor as well as the remuneration to be paid to him. Thereafter, the said approved advocate by the committee is appointed by the local government concerned on the terms and conditions fixed by the Government of the Punjab. The letter for appointment of legal advisor issued by the Secretary, Government of Punjab, Law & Parliamentary Department, Lahore, is generally sent after the acceptance of the offer letter by the candidate, which legally binds the final communication between the organization and employee confirming the offer made by the employer as accepted by the candidate.

Conclusion: Mere recommendation/nomination of Administrator Municipal Corporation for appointment of a Legal Advisor, without compliance of Rule 4 of the Punjab Local Government Legal Advisors Rules, 2003, does not create any vested right.

33. Lahore High Court
Saleem Akhtar Kiyani and others v. Province of Punjab and others
W.P.No.1106 of 2023
Mr. Justice Jawad Hassan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4732.pdf>

Facts: The Petitioners through this writ Petition under Article 199 of the Constitution have prayed that a writ of certioraris be issued declaring the acts, deeds, designs and motives by CDA in so far as they contemplate of creating a new site adjacent to the existing one to use the same by the respondent for dumping garbage, waste and stash from the area of ICT, Islamabad as being illegal, unlawful, violative of

law, oppressive to the lawful rights of petitioners and other residents of the vicinity under Article 4, 9, 14 and 15 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issue:

- i) When a proponent of a project shall commence construction or operation as per Punjab Environmental Protection Act, 1997?
- ii) What is the statutory requirement regarding maintenance of register, under section 7 of Punjab Environmental Protection Act, 1997?
- iii) Whether Federal Government does have the authority to sanction an Act which has a direct negative impact on the ecology and environment?

Analysis:

- i) Perusal of Section 12 of the Act explains that no proponent of a project shall commence construction or operation unless he has filed with the Federal Agency an Initial Environmental Examination or, where the projects is likely to cause an adverse environmental effect, an Environmental Impact assessment, and approval from Federal Agency has to be obtained.
- ii) As per Section 7 *ibid* the EPA shall maintain Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in sub-section 3 *ibid*.
- iii) Even the Federal Government does not have the authority to sanction an Act which is not supported by statutory dispensation and has a direct negative impact on the ecology and environment in which future generations of the people of Pakistan have an overriding and inherent interest.”

Conclusion:

- i) No proponent of a project shall commence construction or operation unless he has filed with the Federal Agency an Initial Environmental Examination under Section 12 of the Punjab Environmental Protection Act, 1997.
- ii) As per Section 7 of the ACT EPA shall maintain Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon
- iii) Federal Government does not have the authority to sanction an Act which is not supported by statutory dispensation and has a direct negative impact on the ecology and environment.

34. Lahore High Court
Syed Ali Kazmi. v Government of Punjab and others.
Writ Petition No. 319 of 2021
Mr. Justice Jawad Hassan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4856.pdf>

- Facts:** Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged a quasi-judicial order passed by the Respondent No.2 pursuant to directions issued in writ petition. The Petitioner has also challenged letter whereby his application for reinstatement in service was dismissed.
- Issues:**
- i) Whether any contract employee has vested right to claim regularization?
 - ii) Under what circumstances, court can interfere into policy?
 - iii) Whether constitutional petition under Article 199 of the Constitution is maintainable when employment is on contract?
- Analysis:**
- i) A temporary/contract/project employee has no vested right to claim regularization. The direction for regularization, absorption or permanent continuance cannot be issued unless the employee claiming regularization has been appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant posts
 - ii) It is not in the domain of the Courts to embark upon an inquiry as to whether a particular policy is wise and acceptable or whether better policy could be drafted. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution.
 - iii) Where employment is on contract, there is a relationship of master and servant and in such like cases the constitutional petition under Article 199 of the Constitution is not maintainable.
- Conclusion:**
- i) A temporary/contract/project employee has no vested right to claim regularization.
 - ii) The Court can only interfere if the policy framed is absolutely capricious and totally arbitrary, offending the basic requirement of the Constitution.
 - iii) When there is a relationship of master and servant then the constitutional petition under Article 199 of the Constitution is not maintainable.

35. Lahore High Court
Dr. Aftab Hassan Minhas v. National Council for Homeopathy etc.,
Writ Petition No. 2362 of 2017,
Mr. Justice Jawad Hassan.
<https://sys.lhc.gov.pk/appjudgments/2023LHC4805.pdf>

- Facts:** The Petitioner filed petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 praying to set aside orders of competent authority and appellate authority respectively passed to the effect of his dismissal from service as well as to the effect of dismissing his consequent appeal preferred under the Regulation 33 of the NCH (Staff) Regulations, 1987.
- Issue:** What is the limitation period to file an appeal against the order of dismissal from service under the Regulation 33 of the NCH (Staff) Regulations, 1987?

Analysis: The Regulations of the NCH (Staff) Regulations, 1987 provide right of appeal against penalty imposed and the Regulation 33 (2) of the NCH (Staff) Regulations, 1987 requires that every appeal should be submitted within a period of 28 days of the communication of the order appealed against.

Conclusion: The limitation to file an appeal against the order of dismissal from service, according to the Regulation 33 (2) of the NCH (Staff) Regulations, 1987, is 28 days from the communication of order of dismissal.

36. Lahore High Court
Ghulam Shabbir v. Mst. Tanzeela Nusrat etc.
Writ Petition No.2669 of 2023
Mr. Justice Jawad Hassan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4866.pdf>

Facts: The petitioner through instant petition under Article 199 of the Constitution of the Constitution calls in question the order passed by the Additional District Judge, whereby while dismissing civil revision of the petitioner, order passed by the learned Civil Judge, was affirmed.

Issues: i) Whether a decree can be executed against surety? If yes, then to what extent?
 ii) Whether High Court can interfere with the concurrent findings of courts on facts, if so, under what circumstances?

Analysis: i) When a person becomes surety for performance of any decree or its part, or restitution of any property taken in execution of decree or payment of any money under an order of the Court in any suit or proceedings, the decree can be executed against him, to the extent for which surety has rendered himself personally liable in the manners provided therein. (...) It is settled law that decree can also be executed against a surety.
 ii) When a factual controversy had been settled by the two courts below, unless and until there were compelling reasons shown for mis-reading and non-reading of evidence in the findings arrived at by courts below or there was a visible irregularity while deciding the dispute, this Court cannot interfere with that finding. (...) This Court is also not ordinarily inclined to interfere with the findings of fact recorded by the learned Courts below, particularly when they are not shown to be contrary to record or arbitrary or whimsical.

Conclusions: i) Yes, the decree can be executed against the surety but only to the extent for which surety has rendered himself personally liable in the manners provided therein.
 ii) The high Court cannot interfere with the concurrent findings unless and until there were compelling reasons shown for mis-reading and non-reading of evidence in the findings arrived at by courts below or there was a visible irregularity while deciding the dispute.

37. Lahore High Court
Mst. Saidan, etc. v. Muhammad Yousaf, etc.
Civil Revision No.270-D of 1997
Mr. Justice Ahmad Nadeem Arshad
<https://sys.lhc.gov.pk/appjudgments/2023LHC4826.pdf>

Facts: Through this Civil Revision, concurrent judgments and decrees of learned Courts below were challenged, whereby, the suit of the respondents/plaintiffs for declaration was decreed with some modification.

Issues: i) What is the impact of section 19-A of the Colonization of the Government Lands Act, 1912, if succession opened out on the termination of the interest of a female tenant?
 ii) Whether section 4 of the Muslim Family Laws Ordinance, 1961 has retrospective affect?

Analysis: i) The rules of succession contained in clauses “a”, “b”, & “c” of Section 20 of the Colonization of the Government Lands Act, 1912 provide that a widow inherits the tenancy under Section 20(b) in the absence of male lineal and is subject to the condition that she will hold the estate only till she remarries or dies or otherwise losses her right under the provisions of the Act, 1912. Meaning thereby, the estate being conferred on her is only limited one and the character of this limited estate is to be determined only by the statute. Whereas, in presence of widow, daughters will not inherit the tenancy rights and they will only succeed under Clause “c” when neither any male lineal descendants are available nor any widow is survived at the time of opening of succession of tenancy rights...Section 20 of the Act, 1912, governs the succession to the tenancy rights of the original tenant whereas, Section 21 of the Act, 1912, contained the rule of successions of the tenant who inherited the same from the original tenant ... Section 19-A is incorporated through the Colonization of Government Lands (Punjab) amendment Act No.III of 1951...The newly inserted Section 19-A, the provisos to which are couched in practically, the same language as Section 3 of the West Punjab Muslim Personal Law (Shariat) Application Act, 1948, but the same has also brought a few minor changes in the course of succession in cases formerly governed by clause (b) of Section 21 of the Act, 1912. One of these changes is that, whereas, formerly if succession opened out on the termination of the interest of a female tenant, the tenancy rights were deemed to be agricultural land acquired by the original tenant, after the insertion of Section 19-A, such tenancy rights are deemed to be the property of the last male owner who may or may not have been the original tenant.
 ii) Under the Islamic Sharia, predeceased children are not entitled to any inheritance as only the survivors to a deceased are entitled to inheritance. In the year 1961, the Muslim Family Laws Ordinance, 1961 was promulgated ...wherein section 4 was introduced, by virtue of which, legal heirs of pre-

deceased son or daughter of propositus would be entitled to inheritance on re-opening of the succession... the grandchildren are entitled to receive share equal to the share of their mother or father in view of section 4 of the Ordinance, 1961 irrespective of the fact their mother or father died before or after the promulgation of the Ordinance, 1961 and the only condition is that the succession should be open after the promulgation of the Ordinance, 1961.

Conclusion: i) After the insertion of Section 19-A of law *ibid*, tenancy rights are deemed to be the property of the last male owner who may or may not have been the original tenant.
ii) Section 4 of the Muslim Family Laws Ordinance, 1961 applies where succession is opened after the promulgation of the Ordinance *ibid*.

38. Lahore High Court

M/s Computer Tips & another v. Province of Punjab & 03 others
M/s Kingly Solutions (Pvt) Limited v. Province of Punjab & 02 others
Writ Petition No. 28679 / 2023, 33077 / 2023

Mr. Justice Abid Hussain Chattha

<https://sys.lhc.gov.pk/appjudgments/2023LHC4741.pdf>

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, petitioners have sought direction to direct the respondents to release the entire contract price of all subject contracts to the petitioners.

Issue: Whether a party is entitled for payment after execution of successful contract?

Analysis: A party is entitled for payment after successful conclusion of the executed contracts in terms of Rule 62 of the Punjab Procurement Rules, 2014 within the time given in the conditions of the contract which shall not exceed thirty days.

Conclusion: A party is entitled for payment after execution of successful contract.

39. Lahore High Court

Muhammad Tariq Sahi v. Government of Punjab, etc.
W. P. No. 81499 / 2022

Mr. Justice Abid Hussain Chattha

<https://sys.lhc.gov.pk/appjudgments/2023LHC4985.pdf>

Facts: It is the case of the Petitioner that due to non-issuance of explosive license on time, some of the lease period was wasted in which the Petitioner could not obtain lawful benefits. Accordingly, the Petitioner was constrained to file an application under Rule 185-A(2) of the Punjab Mining Concession Rules, 2002 (the "Rules") seeking extension in the lease period. The said application was entertained by Respondent No. 1 in terms of his revisional powers under the aforesaid Rule. The request of the Petitioner was conditionally allowed through the impugned Order.

Issue: Whether the contractor is entitled for extension in the lease period subject to payment of advance proportionate bid money at the time of grant of lease or at the rate of newly fixed reserve price?

Analysis: When a contractor bids for a mining contract, he caters for all potential impediments in the execution of the contract if declared successful and submits his bid, accordingly. Notwithstanding the same Rule 222 of the Rules is available for certain unforeseen or extraordinary circumstances to cater for lost period of lease. The term “proportionate bid money” employed in Rule 222 of the Rules relates to bid money at which the bidder was granted the mining lease. However, the term “proportionate bid money” employed in Rule 228 of the Rules relates to prevalent reserve price of new bid for the reason that due to afflux of time, the prices have increased and cannot be deemed to remain static. Even otherwise, it is now well entrenched in our jurisprudence that public properties are required to be auctioned at the best possible price to avoid any financial loss to the exchequer. The finding was squarely in line with the reasoning of the Supreme Court of Pakistan and in accordance with the mandate of Rule 228 of the Rules. As such, the lease period was rightly extended subject to payment of advance proportionate bid money at the rate of newly fixed reserve price of the block.

Conclusion: The contractor is entitled for extension in the lease period subject to payment of advance proportionate bid money at the rate of newly fixed reserve price.

40. Lahore High Court
Kamran Saeed v. Additional District Judge etc.
W.P No. 15564/2023
Mr. Justice Anwaar Hussain
<https://sys.lhc.gov.pk/appjudgments/2023LHC4682.pdf>

Facts: The contest between the petitioner and the respondent is regarding permanent custody of the minor. The petitioner filed a guardian petition which was allowed keeping in view the preference of the minor and also chalked out a comprehensive visitation schedule, enabling the respondent to meet the minor. This order was challenged by the respondent by preferring appeal and the same was allowed. Comprehensive meeting schedule chalked out by the learned Guardian Judge was held to be applicable to the petitioner, mutatis mutandis, as noncustodial parent, hence, this constitutional petition.

Issues: i) Whether preference of the minor can be the sole criterion for the determination of his/her permanent custody?
 ii) How the preference of minor is analyzed by the court?

Analysis: i) If the minor is old enough, his/ her opinion, rather to be precise, intelligent preference does matter in deciding the custody. However, it is imperative to note that the word used in Section 17 of the Guardians and Wards Act, 1890 in considering preference of the minor is “may” and not “shall”. In case reported as

“Mst. Aisha v. Manzoor Hussain and others” (PLD 1985 SC 436) the Supreme Court of Pakistan held that the minor is not the best judge for his/her own welfare and his/her choice will only be considered if it is in the best interest of the minor. Therefore, it is for the Guardian Court to carefully determine as to how much preference and importance should be given to the choice of the minor.

ii) Section 17 of the Guardians and Wards Act, 1890 contemplates as to how to analyze the minor’s preference. The Court must consider the age and maturity of the child and also the reason for the preference while analyzing the preference. The preference is sometimes based on as to how a minor feel at the moment when the preference is given, changes in his/her life or a reaction to something, for instance, being disciplined by the custodial parent.

Conclusion: i) Preference of the minor cannot be the sole criterion for the determination of his/her permanent custody.
ii) As per section 17 of the Guardians and Wards Act, 1890, court must consider the age and maturity of the child and also the reason for the preference while analyzing the preference.

41. Lahore High Court
Muhammad Waqas v. Executing Court, etc.
Writ Petition No.25771 of 2022
Mr. Justice Anwaar Hussain
<https://sys.lhc.gov.pk/appjudgments/2023LHC4846.pdf>

Facts: Respondents instituted a suit against the petitioner which was ex-parte decreed, where-after execution proceedings were initiated by the respondents. After sometime respondent No.3 got recorded her statement that she does not want to proceed with the execution petition and the matter was consigned to the record. However, subsequently, the execution proceedings were restored. Then after issuing warrant of attachment of the property of the petitioner, auction schedule was chalked out while calculating the decretal amount till the year 2035. Respondent No.3 purchased the said property by adjusting the amount of maintenance. The petitioner assailed order by way of filing an application under Section 12(2) of the Code of Civil Procedure, 1908. The application of the petitioner was dismissed by the Executing Court, against which the petitioner filed a revision petition that was also dismissed vide judgment. Hence, this constitutional petition.

Issues: i) Which remedy is available to the minor in case of failure to pay maintenance?
ii) What is the purpose of maintenance?
iii) What if the needs of the minor or the financial resources of the father may undergo change?
iv) What if regular maintenance is not paid despite being decreed?
v) Whether the maintenance of a time period which is yet to arrive can be considered as arrears?

- vi) Whether the executing court is empowered to confirm an auction that was not conducted in accordance with the just and equitable principles?
- vii) Whether the Family Court is bound by the procedural technicalities of the CPC?
- viii) Whether High Court can rectify wrongly mentioned provision of law and mould the relief claimed in order to ensure justice?

Analysis:

- i) Failure to pay maintenance may constrain a minor, through a guardian/mother, to have recourse to institution of suit and that is usually decreed and certain amount is determined and awarded by the Courts, along with annual increase.
- ii) The purpose is to maintain a minor by provision of the necessities of life such as food, clothing and education etc., which necessarily implies that the same are to be fulfilled as and when the same arise.
- iii) One cannot lose sight of the fact that the needs of the minor as well as the financial resources of the father may undergo change. Any such change may be brought before the Court for the refixation and re-determination of the maintenance as held in case reported as “Samia Anwar and another v. Nasir Hussain and 2 others” (2022 MLD 731).
- iv) If regular maintenance is not paid despite being decreed, the same becomes arrears of maintenance that can be enforced through different modes adopted for the execution of the decree. Thus, it is the failure of the father to make payment of maintenance for a particular period which renders the same recoverable as arrears. As further explication, maintenance is a debt which becomes due when a minor is not maintained at a particular period and it is passage of that time period coupled with the failure to pay the decretal amount, which transforms the said obligation into arrears.
- v) This necessarily implies that arrears are with respect to the past period and maintenance for a future period cannot be notionally deemed as arrears as it is the crucial aspect of failure to make payment of maintenance decreed that transforms the same into arrears. Maintenance of a time period which is yet to arrive cannot be considered as arrears as the fundamental and pivotal condition of failure to maintain cannot be anticipated in advance inasmuch as there is every likelihood that the father fulfils his obligation to maintain the minor when said obligation arises in future. Therefore, the notional conversion of future maintenance of a future period into arrears of decretal amount cannot be countenanced, under the law.
- vi) It is imperative to note that even the inappropriate conduct on part of the petitioner does not empower the Executing Court to confirm an auction that was not conducted in accordance with the just and equitable principles. This is more so when the decree has been executed for future maintenance that was neither due nor permissible under the law.
- vii) The Family Court is not bound by the procedural technicalities of the CPC as envisaged by Section 17 of the Act, 1964. The Family Court is vested with the power to formulate its own procedure.

viii) Needless to mention that wrong mentioning of a provision of law makes no difference if the order or the proceedings challenged are nullity in the eye of law and High Court in its supervisory jurisdiction can rectify such an error and mould the relief claimed in order to ensure justice.

- Conclusion:**
- i) Failure to pay maintenance may constrain a minor, through a guardian/mother, to have recourse to institution of suit.
 - ii) The purpose is to maintain a minor by provision of the necessities of life such as food, clothing and education etc.
 - iii) Any such change may be brought before the Court for the re-fixation and re-determination of the maintenance.
 - iv) If regular maintenance is not paid despite being decreed, the same becomes arrears of maintenance that can be enforced through different modes adopted for the execution of the decree.
 - v) Maintenance of a time period which is yet to arrive cannot be considered as arrears.
 - vi) The executing court is not empowered to confirm an auction that was not conducted in accordance with the just and equitable principles.
 - vii) The Family Court is not bound by the procedural technicalities of the CPC as envisaged by Section 17 of the Act, 1964.
 - viii) High Court can rectify wrongly mentioned provision of law and mould the relief claimed in order to ensure justice.

42. Lahore High Court
Hira Masood v. Additional District Judge etc.,
Writ Petition No.35641/2019,
Mr. Justice Anwaar Hussain.
<https://sys.lhc.gov.pk/appjudgments/2023LHC4933.pdf>

Facts: The petitioner's suit for recovery of dowry articles was partially decreed, while her others suit for recovery of maintenance and dower was also decreed against the Respondent. Both parties preferred appeals. Through consolidated judgment and decree, the appeal of the petitioner was dismissed while the appeal preferred by the respondent was partially allowed in terms that the suit of the petitioner to the extent of dower and gold ornaments was dismissed, while findings to the extent of maintenance were maintained. Hence, the present constitutional petition.

Issues:

- i) What is the significance of columns No.13 to 16 of the *nikahnama* regarding Dower?
- ii) What is the scope of Section 10 of the Muslim Family Courts Ordinance, 1961?
- iii) How mode of payment of dower is determined?
- iv) Who has to prove that the obligation of Dower has been discharged?

Analysis: i) The entry in column No. 13 of the *nikahnama* is to contain the amount of dower, the entry in column No.14 envisages the break-up of dower spelled out by

virtue of entry under column No. 13 into prompt and deferred, whereas entry in column No. 15 may contain anything given or paid out of the amount envisaged under entry in column no. 13 or in addition thereto forming as part of the dower overall. Therefore, anything other than an amount, forming part of dower overall and incorporated under columns No. 15 and/or 16 has also to contain the time and mode of payment and giving of the same by husband to wife.

ii) Section 10 of the Muslim Family Courts Ordinance, 1961, contemplates that if no details about the mode of payment of dower are specified in the *nikahnama* or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

iii) It is only the deferred dower that becomes due upon certain exigencies, such as death and divorce, whereas once the mode of payment of some part of dower is settled by way of declaring it as prompt in Column No.15, the obligation to pay prompt dower needs to be clearly mentioned as having been paid at the time of *nikah* or left payable on demand of the wife.

iv) The burden to prove the discharge of obligation of dower is on the husband. Said burden can be discharged through an act on part of the wife like execution of an affidavit having received the dower or producing the witness in whose presence said obligation was discharged and not by relying on the entry against Column No.15 of the *nikahnama* having been crossed off.

- Conclusion:**
- i) The entries in columns No.13 to 16 together become ‘dower overall’.
 - ii) Section 10 of the Muslim Family Courts Ordinance, 1961, deals with the situation when mode of payment of dower is not specified in the *Nikahnama*.
 - iii) The mode of payment of whole or some part of dower is settled by way of declaring it as prompt or deferred or payable on demand in Column No.15 of *Nikahnama*.
 - iv) The burden to prove that obligation of Dower has been discharged is on the husband.

43. Lahore High Court
Muhammad Nawaz v. Additional District Judge, etc.
W.P. No.65227 of 2023
Mr. Justice Raheel Kamran
<https://sys.lhc.gov.pk/appjudgments/2023LHC4878.pdf>

Facts: The petitioner has assailed the order passed by the Senior Civil Judge (Family Division), whereby application of the petitioner seeking permission to produce additional evidence was dismissed as well as the judgment passed by the learned Additional District Judge whereby appeal there-against was also dismissed.

- Issues:**
- i) What are the principles governing the exercise of discretion by the Family Court?
 - ii) Whether the Family Court can grant the permission to produce the document at the belated stage of the case?

- Analysis:** i) It is well settled that a purposive rather than literal approach to the interpretation is to be adopted while interpreting provisions of the Family Courts Act, 1964, therefore, an interpretation which advances purpose of the Act is to be preferred over an interpretation which defeats its object. It cannot be lost sight of that a special forum of the Family Court has been created by the legislature for expeditious settlement and disposal of disputes relating to marriage and family affairs, as manifest from preamble of the Act. Section 12A of the Act has specified a period within which such cases have to be disposed of by a Family Court. It is a quasi-judicial forum which can draw and follow its own procedure provided such procedure is not against the principles of fair hearing and trial.
- ii) Permission for belated filing and production of a document in evidence cannot be granted as a matter of routine. The discretion should be exercised by the Family Court through a speaking order keeping in view the facts and circumstances in each case.
- Conclusion:** i) Family Courts have been created by the legislature for expeditious settlement and disposal of family disputes. It is a quasi-judicial forum which can draw and follow its own procedure provided such procedure is not against the principles of fair hearing and trial.
- ii) Family Court cannot grant the permission to produce the document at the belated stage of the case as a matter of routine.

44. Lahore High Court
Sarwar Taj v. Government of the Punjab etc.
Writ Petition No.56980 of 2023
Mr. Justice Raheel Kamran
<https://sys.lhc.gov.pk/appjudgments/2023LHC4991.pdf>

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Petitioner has prayed that the respondents may kindly be directed to decide the application of the petitioner to allow him to devour/eat poison in the prescribed manner before the audience and the expertise in the said field for the benefit of public at large.

- Issues:** i) Whether a direction in the nature of mandamus can be issued where there is no provision in law conferring authority upon Government or the District Administration to do a particular act, direction of which is sought for?
- ii) Whether a Court can issue the direction which carries potential risk of commission of any offence in the statute book?
- iii) Whether a relief which is prohibition, constituting offence and also a perpetuate anarchy in the field of drugs may be allowed?

Analysis: i) A writ in the nature of mandamus in terms of Article 199(1)(a)(i) of the Constitution of Islamic Republic of Pakistan, 1973 visualizes issuance of direction, inter alia, to a person performing functions in connections with affairs of the Federation, a Province or a Local Government to do what law requires him

to do... It is well settled that the exercise of jurisdiction under Article 199 of the Constitution is discretionary. The Petitioner failed to point out any provision in law conferring authority upon Government of the Punjab or the District Administration to grant the permission in such like set of circumstances as asserted by petitioner.

ii) Although attempt to commit suicide has been decriminalized with effect from 28th December 2022 when the offence under section 325 of the Pakistan Penal Code, 1860 („PPC“) was omitted through Criminal Laws (Amendment) Act, 2022 (Act XXXVII of 2022), however, the offence of negligent conduct with respect to poisonous substance, as prescribed in section 284 of the PPC, remains on the statute book. Hurt caused by corrosive substance, as prescribed in section 336A of the PPC, is another offence. In the statutory explanation, “corrosive substance” for the said offence has been defined to include poison. This Court cannot issue the direction sought where the same carries potential risk of commission of any offence in the statute book.

iii) Schedule II of the Drug Regulatory Authority of Pakistan Act, 2012 („DRAP Act“) specifies prohibitions which constitute offences punishable under Schedule III, as mandated by Section 27 of that Act. What the petitioner seeks in relief in the instant case is surely a public representation of his act of consumption of a substance that he believes would not cause his death but may cure and recover cancer patients. The relief sought by the petitioner, if allowed, is not only likely to be in violation of these prohibitions constituting offences but perpetuate anarchy in the field of drugs. The Poisons Act, 1919 has been enacted to regulate importation, possession and sale of poisons. Section 4 of that legislation confers power upon the Provincial Government to regulate possession of any specified poison in any local area and in that regard, it also prescribes an offence punishable with imprisonment. Section 5 of the said Act draws a presumption that any substance specified as poison in a rule framed under section 8 of the Poisons Act is deemed to be a poison for the purpose of that Act. Additionally, storage, use in drugs and labelling of poisonous substances is regulated by the Drugs Act, 1976 and rule 20 of the Punjab Drug Rules, 2007. Issuance of the direction prayed for may also have the effect of undermining the role and authority of the regulator under the aforementioned laws.

- Conclusion:**
- i) Direction in the nature of mandamus cannot be issued in absence of express provision of law conferring authority upon Government or the District Administration to do a particular act, direction of which is sought for.
 - ii) Any direction which carries a potential risk of commission of any offence cannot be granted.
 - iii) A relief which is prohibited and perpetuate anarchy in the field of drugs cannot be allowed.
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LATEST LEGISLATION/AMENDMENTS

1. Through Official Secret (Amendment) Act, 2023, sections 2, 3, 3A, 4, 5, 9, 12 are amended whereas sections 6A, 12A & 16 are inserted in Official Secrets Act, 1923 vide Notification No. F. 9(38)/2023-Legis.
2. Through Pakistan Army (Amendment) Act, 2023, sections 2, 8, 17, 91, 92, 126, 176, , 176A & 176C, are amended and sections 10, 18, & 176D are substituted whereas sections 1, 26A, 26B, 55A, 55B, 55C, 175A to 175E, 176AA & 176E are inserted in the Pakistan Army Act, 1952 vide Notification No. F. 9(30)/2023-Legis.
3. Through the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2023, preamble and sections 2, 4, 6, 8, 11, 20, 24, 27, 29, 37 are amended and sections 13, 26, 29A, 30A, are substituted whereas sections 20A, 20B, 30B, & 39A are inserted in Pakistan Electronic Media Regulatory Authority Ordinance, 2002 vide Notification No. F. 22(25)/2023-Legis.
4. Through the Press Council of Pakistan (Amendment), Act, 2023, section 8 of Press Council of Pakistan Ordinance, 2002 has been amended vide Notification No. F. 9(41)/2023-Legis.
5. Through the Trade Marks (Amendment) Act, 2023, sections 2, 7, 9, 10, 11, 14, 17, 24, 33, 47, 48, 51, 53 to 60, 62 to 67, 70, 73, 77, 78, 80, 93, 95, 96, 105, 111, 114, 116, 117, 118, 122, 124 to 126, 129, 132 & First and second Schedule are amended whereas section 10A & chapter XA are inserted in The Trade Marks Ordinance, 2001 (XIX of 200) vide Notification No. F. 9(17)/2023-Legis.
6. Through the Pakistan International Airline Corporation (conversion) (Amendment) Bill, 2023, sections 2, & 4 are amended in the Pakistan International Airline Corporation (conversion) Act, 2016 vide Notification No. F. 22(45)/2023-Legis.
7. The Trade Dispute Resolution Act, 2023 has been enacted vide Notification No. F. 22(30)/2023-Legis.
8. The National Anti-Money Laundering and Counter Financing of Terrorism Authority Act, 2023 has been enacted vide Notification No. F. 9(48)/2023-Legis.
9. Vide the Emigration (Amendment) Act, 2023, section 15 of the Emigration Ordinance, 1979 has been amended vide Notification No. F. 9(10)/2023-Legis.
10. Through the Zakat and Ushr (Amendment) Act, 2023, section 2, 13 & 22 of the Zakat and Ushr Ordinance, 1980 have been amended vide Notification No. F. 9(40)/2023-Legis.
11. Vide the Gas (Theft Control and Recovery) (Amendment) Act, 2023, section 3 of the Gas (Theft Control and Recovery) Act, 2016 has been amended Notification No. F. 9(39)/2023-Legis.
12. The Pakistan General Cosmetics Act, 2023 has been enacted vide Notification No. F. 24(68)/2023-Legis.

13. Through the Elections (Second Amendment) Act, 2023, sections 2, 12, 15, 18, 19, 20, 55, 57, 59 to 61, 68, 76, 79, 83, 86, 90, 93, 95, 96, 99, 105, 107 to 110, 118, 122, 127, 130, 132, 133, 140, 144, 148, 155, 158, 167, 170 to 172, 184, 190A, 203, 208, 211, 219, 230, 231 and Form C of the Elections Act, 2017 have been amended vide Notification No. F. 22(58)/2020-Legis.
14. The Pakistan Airports Authority Act, 2023 has been enacted vide Notification No. F. 22(46)/2021-Legis.
15. Through the Pakistan Nursing Council (Amendment) Act, 2023, section 7 of the Pakistan Nursing Council Act, 1973 vide Notification No. F. 24(66)/2023-Legis.
16. Through the Cantonment (Amendment) Act, 2023, sections 2, 3, 41, 51 to 53, 56, 57, 60 to 68, 71, 73, 74, 75 to 77, 79 to 82, 84, 87, 89, 90 to 92, 99, 101, 103, 116, 118 to 120, 124, 125, 139, 141, 150, 159, 167, 184, 185, 186, 192, 193, 196, 202, 204, 205, 209, 210, 213 to 216, 226, 232, 236, 240, 249, 255, 259, 277, 280, 282, 283, 284, 286, 286B, and Schedule I have been amended, sections 43B, 61, 62, 63, 90 and Schedule II are substituted, sections 15 to 151, 18, 19, 34, 35 are omitted whereas sections 8A, 19A to 19U, 89A, 92A, 178AA, 179A, 185A, 268A, 281A, 292A and Chapter IIA are inserted in the Cantonment Act, 1924 (II of 1924) vide Notification No. F. 22(33)/2022-Legis.
17. The Pakistan Sovereign Wealth Fund Act, 2023 has been enacted vide Notification No. F. 9(37)/2023-Legis.
18. The Pakistan Civil Aviation Act, 2023 has been enacted vide Notification No. F. 22(47)/2021-Legis.
19. The Pakistan Air Safety Investigation Act, 2023 has been enacted vide Notification No. F. 9(34)/2023-Legis..
20. The Gun and Country Act, 2023 has been enacted vide Notification No. F. 9(46)/2023-Legis..
21. The National Logistics Corporation Act, 2023 has been enacted vide Notification No. F. 9(47)/2023-Legis.
22. Through the Price Control and Preventions of Profiteering and Hoarding (Amendment) Act, 2023, section 6A is inserted in the Price Control and Preventions of Profiteering and Hoarding Act, 1977 vide Notification No. F. 9(53)/2023-Legis..
23. Through the Board of Investment (amendment) Act, 2023, Chapter IIA is inserted in the Board of Investment Ordinance, 2001 vide Notification No. SOR-III(S&GAD)1-11/2022.
24. In exercise of the powers conferred under section 23 of the Punjab Civil Servants Act, 1974, amendments in the Punjab Information and Culture Department Rules, 1977 have been made at serial number 03, after serial number 6D & 11 in the Schedule vide Notification No. SOR-III(S&GAD)1-11/2022.
25. In the exercise of powers conferred under section 23 of the Punjab Civil Servants Act, 1974, the Home Department (Foreign National's Security

Wing) Employees Service Rules 2023 have been made vide Notification No. SOR-III(S&GAD) 1-35/2021.

26. In exercise of the powers conferred under section 23 of the Punjab Civil Servants Act, 1974, amendments have been made at serial no. 06 to 09 in schedule in the Punjab Government VIP Flight (Technical Posts) Recruitment Rules 2015 vide Notification No. SOR-III(S&GAD) 2-32/2000(P).

27. In exercise of the powers conferred under section 23 of the Punjab Civil Servants Act, 1974, amendment has been made at serial no. 05 in the schedule in the Punjab Agriculture Department (Research Wing) Service Rules, 1980 vide Notification No. SOR-III(S&GAD) 1-9/2023.

SELECTED ARTICLES

1. MANUPATRA

<https://articles.manupatra.com/article-details/Non-Obstante-Provisions-in-Statutes>

Non-Obstante Provisions in Statutes by Ashwini Panwar and Nipun Dwivedi

Legislations are intended to address issues involving specific subject matter. A right granted under one legislation may be affected by the provisions of another legislation. A logical question that follows is - which provision would prevail? The obvious answer is that the legislation dealing with the specific subject matter should prevail over general legislation.

2. MANUPATRA

<https://articles.manupatra.com/article-details/Supreme-Court-Can-Dispense-with-Cooling-Period-In-Mutual-Consent-Divorce>

Supreme Court Can Dispense with ‘Cooling Period’ In Mutual Consent Divorce by Nyaaya

Divorce is an emotionally and legally difficult experience. It takes on many forms, one of which is divorce by mutual consent, where the couple mutually agrees to dissolve the marriage without assigning blame to either spouse. This form of divorce is relatively easier to navigate and follows a shorter procedural span. However, in objective terms, this too can be a lengthy and complicated process. A recent Supreme Court judgement grappled with this issue under the current laws on divorce and introduced two significant changes. One, irretrievable breakdown of marriage is now recognised as a ground for divorce and second, couples seeking divorce under Hindu Law no longer need to undergo the mandatory 6 months "cooling period".

3. **MANUPATRA**

<https://articles.manupatra.com/article-details/Medical-Negligence-Civil-and-Criminal-Liability>

Medical Negligence: Civil and Criminal Liability by Nyaaya

Medical Negligence is misconduct by a medical professional that leads to harm or injury to the patient. Medical professionals have a duty of care toward their patients. If a medical professional fails to perform their duty of care to the level they are required to maintain, it is considered Medical Negligence.

4. **THE NATIONAL LAW REVIEW**

<https://www.natlawreview.com/article/trespassers-how-protect-your-farm-against-unwelcome-strangers>

Trespassers? How to Protect Your Farm Against Unwelcome Strangers by Jane Francis Nowell , Clifford P. Parson

Such unauthorized entry could include media news teams filming farm operations, environmental activists seeking to identify violations of various water quality or waste management rules, animal rights advocates attempting to observe or document livestock conditions inside your operation, protesters opposed to the construction or operation of livestock farms, or simply curiosity seekers trying to view a farming operation up close. Intruders may range from self-appointed "river keepers" or foreign media looking for a hot story about American farming or livestock operations to a cheapskate looking to dump garbage or trash without paying required fees. No matter the reason, whether harmless in purpose or not, there are bio-security reasons for preventing unauthorized entry onto a farm, regulatory enforcement, and public relations reasons for not allowing someone to gather information from your operation without your permission. Understanding the risk of an uninvited person and preparing for your reaction is essential for a farm owner.

5. **THE NATIONAL LAW REVIEW**

<https://www.natlawreview.com/article/chat-caution-growing-data-privacy-compliance-and-litigation-risk-chatbots>

Chat with Caution: The Growing Data Privacy Compliance and Litigation Risk of Chatbots by Melanie A. Conroy , Kathleen M. Hamann , Ariel Pardee

In a new wave of privacy litigation, plaintiffs have recently filed dozens of class action lawsuits in state and federal courts, primarily in California, seeking damages for alleged "wiretapping" by companies with public-facing websites. The complaints assert a common theory: that website owners using chatbot functions to engage with customers are violating state wiretapping laws by recording chats and giving service providers access to them, which plaintiffs label "illegal eavesdropping." Chatbot wiretapping complaints seek substantial damages from defendants and assert new theories that would dramatically expand the application of state wiretapping laws to customer support

functions on business websites. Although there are compelling reasons why courts should decline to extend wiretapping liability to these contexts, early motions to dismiss have met mixed outcomes. As a result, businesses that use chatbot functions to support customers now face a high-risk litigation environment, with inconsistent court rulings to date, uncertain legal holdings ahead, significant statutory damages exposure, and a rapid uptick in plaintiff activity.

6. **LEGALVISION**

<https://legalvision.com.au/real-estate-agency-agreement/>

What to Include in a Real Estate Agency Agreement by Phoebe Chester

An Agency Agreement is the foundation of a successful working relationship between real estate agents and clients looking to sell their property. This agreement outlines the terms and conditions of your collaboration and sets the stage for a transparent, efficient, and legally sound transaction. The specific components required in an Agency Agreement will change depending on the state or territory you operate in. This article discusses the essential features of all Agency Agreements in Australia.
