Lahore High Court

BULLETIN

Fortnightly Case Law Update *Online Edition*

Volume - II, Issue - V

01 - 03 - 2021 to 15 - 03 - 2021

Published By: Research Centre, Lahore High Court, Lahore

Online Available at: https://researchcenter.lhc.gov.pk/Home/CaseLawBulletin

Disclaimer

Due care and caution has been taken in preparing and publishing this bulletin. Where required, text has been moderated, edited and re-arranged. The contents available in this Bulletin are just for Information. Users are advised to explore and consult original text before applying or referring to it. Research Centre shall not be responsible for any loss or damage in any manner arising out of applying or referring the contents of Bulletin.

FORTNIGHTLYCASE LAW BULLETIN

(01-03-2021 to 15-03-2021)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

DECISIONS OF INTEREST

No	Reference	Subject	Jurisdiction	Page(s)
1.	Civil Appeals Nos. 902 and 903 of 2020	Service Law: Right of study leave ..... Inherent power and doctrine of estoppel cannot be applied to defeat the provisions of statute	Supreme Court of Pakistan	1
2.	C.P.1692-L/2020, C.P.1792-L/2020 and C.P.5-L/2021	Drugs Act, 1976.....Provincial Quality Control Board: re-testing after considering the grounds against the Report	Supreme Court of Pakistan	1
3.	CMA NO. 284 OF 2021	Powers of Supreme Court regarding transfer of a case from one province to another province without notice to other party	Supreme Court of Pakistan	2
4.	Civil Appeal NO. 900 of 2020	Striking down of a policy or notification......No direction can be passed to a statutory body to adopt the rules/policies of another statutory body	Supreme Court of Pakistan	2
5.	Civil Appeal No.960 of 2017	Detail of oral sale is necessary to be mentioned in the plaint..... Mere prolonged possession does not establish the claim of ownership	Supreme Court of Pakistan	3
6.	C.P.446-L/2019	Doctrine of Judicial overreach: High Court does not have any suomotu jurisdiction under Article 199 of the Constitution	Supreme Court of Pakistan	4
7.	Civil Petition No.2580 of 2020	Standards of proof of General and Special damages	Supreme Court of Pakistan	5
8.	Crl. Petition 742-L of 2019 and Crl. Petition 629-L of 2019	Scope and extent of Section 172 Cr.P.C	Supreme Court of Pakistan	6
9.	Crl. M.A 62-P/2018 in Crl O.P.82/2010	Mode of Implementation of Supreme Court Order: Ordinary proceedings or Contempt proceedings	Supreme Court of Pakistan	7

10.	CPLA No. 3171 of 2020	Maintainability of writ petition against Executive Committee of Pakistan Bar Council	Supreme Court of Pakistan	7
11.	Writ Petition No. 54008/2020	Powers of Higher Education Department in registration process of private colleges	Lahore High Court	8
12.	Criminal Revision No. 53210 of 2020	Dismissal for non-prosecution of an appeal after admission and restoration of an appeal mechanism.	Lahore High Court	9
13.	F.A.O.No. 152 of 2005.	Effect of order/judgment rendered by an Additional District Judge under Section 11 of the Punjab Waqf Properties Ordinance, 1979	Lahore High Court	9
14.	Criminal Appeal No. 280-J of 2019 Murder Reference No.82 of 2015	Delay in post mortem examination is fatal for the prosecution	Lahore High Court	10
15.	W.P. No.8105/2021	Benami Transactions (Prohibition) Act, 2017: It is not necessary that subject matter of the allegation of benami is held by benamidar in relation to offences specified in section 2 (31) of the Act	Lahore High Court	11
16.	Criminal Revision No.57 of 2020	Witness cannot be permitted to be re-examined before conclusion of cross-examination on him	Lahore High Court	12
17.	ICA No.33280/2020	Circumstances about maintainability of Intra Court Appeals (ICAs)	Lahore High Court	13
18.	WP No.35089/2020	Determination of 'prescribed price' and the 'sale price' of natural gas under the Oil and Gas Regulatory Authority Ordinance, 2002 and Natural Gas Tariff Rules, 2002	Lahore High Court	13
19.	Writ Petition No. 510-N2019	Doctrine of ipsidixit of the polie: Power of Magistrate to cancel F.I.R is supervisory in nature	Peshawar High Court	15
20.	CPD Nos. 7042 of 2018, 7409 of 2018 and 8302 of 2019	Membership / entrance fees and subscriptions charges qua membership of clubs and deduction of sales Tax	Sindh High Court	16
21.	SCRAs 311 to 313 of 2020	Retrospective effect of beneficial notification issued during the pendency of adjudication proceedings	Sindh High Court	18
22.	Constitutional Petition No. D-281 of 2020	Proceedings of Provincial Selection Board cannot be challenged under Article 199 of the Constitution	Sindh High Court	19

23.	CR. Appeal No.371/2020	Allocation of separate barracks for transgender in the Prisons	Sindh High Court	20
24.	CPD 4633 of 2017	Contractual dispute of which there remains no corroboration on record can be questioned in Constitutional jurisdiction of the High Courts	Sindh High Court	21
25.	FNU Tanzin v. Tanvir	Religious Freedom Restoration Act (RFRA)'s express remedies provision permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities.	Supreme Court of the United States	21
26.	T W Logistics Ltd v. Essex County Council[2021] UKSC 4	Commercial activities not to be criminalised by the Victorian statutes where those activities are "warranted by law".	United Kingdom Supreme Court	22
27.	Benning v. Richardson [2021] ACTSC 34	Contributory negligence: intoxicated driver..... not wearing a seatbelt.... amount of damages reduced	Supreme Court of the Australian Capital Territory	23
28.	Civil Appeal No 821 of 2021	Decision by High Court without discussing the rival merits of parties and reproducing paragraphs of Tribunal's decision, is not justified	Supreme Court of India	24
		Selected Articles		
1.	MANUPATRA: COVID-19, Leases & Rent: The Legal Viability of Frustration by Force Majeure in Lease Agreements by Raghav Kacker& Ruchi Chaudhury			25
2.	HARVARD LAW REVIEW: The Morality of Administrative Law by Cass R. Sunstein & Adrian Vermeule			25
3.	COURTING THE LAW: No More Dignity Trials by Laiba Qayyum			25
4	MODERN LAW REVIEW: Reason-Giving in Administrative Law: Where are We and Why have the Courts not Embraced the 'General Common Law Duty to Give Reasons'? by Joanna Bell			25

1. **Supreme Court of Pakistan**
University of Malakand v. Dr. Alam Zeb etc.
Civil Appeals Nos. 902 and 903 OF 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.a._902_2020.pdf

Facts: Respondents, contract employees subsequently regularized, applied for study leave which was granted without pay. On return, their request that their leave without pay might be treated as leave with full pay was rejected.

Issue: After availing the study leave without pay, whether the respondents are not estopped by their conduct to claim the said study leave with full pay?

Analysis: It is now well settled that no estoppel exists against law, therefore, one wrong of the respondents of not claiming their right earlier cannot be acted upon as a precedent when it comes to give effect to the express words of a statute. If a person has been bestowed some legal right by law/statute and he omits to claim such legal right for a certain period of time, it does not mean that he has waived his legal right and subsequently he cannot claim such right. Inherent power and doctrine of estoppel cannot be applied to defeat the provisions of statute. When the statute clearly provided that study leave on full pay may be granted to an employee who has put in at least three years' service, the appellant authority ought not to have refused the respondents their right guaranteed under the statute.

Conclusion: Respondents are not estopped to claim the study leave with full pay because when a person has been bestowed some legal right by law/statute and he omits to claim such legal right for a certain period of time, it does not mean that he has waived his legal right and subsequently he cannot claim such right. Inherent power and doctrine of estoppel cannot be applied to defeat the provisions of statute.

---

2. **Supreme Court of Pakistan**
Province of Punjab v. M/s Bloom Pharmaceuticals (Pvt.) Limited
C.P.1692-L/2020, C.P.1792-L/2020 and C.P.5-L/2021
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1692_l_2020.pdf

Facts: The question that requires determination revolves around the interpretation of section 22 sub-sections (4) and (5) of the Drugs Act, 1976 as to whether the Provincial Quality Control Board ("Board"), etc. enjoys the "discretion" under section 22(5) of the Act to either allow or reject the request of the accused or the complainant for re-testing of the drug.

Issue: Whether the Provincial Quality Control Board ("Board"), etc. enjoys the "discretion" under section 22(5) of the Act to either allow or reject the request of the accused or the complainant for re-testing of the drug?

Analysis: Once the complaint is filed against the Report by the accused within ten days as required by section 22(4), the Board or any other authority, before whom such a complaint against the Report is pending, can on its own motion or in its discretion on the request of the accused or the complainant may allow re-testing of the drug from the Federal Drug Laboratory, etc. Other than the suo-motu power enjoyed by the Board, etc. to send the drug for retesting, the Board, etc. also enjoys the

discretion to allow or disallow the request for re-testing by the accused or the complainant….On the whole, the Board, etc. enjoys independent discretion to allow or disallow the request of the accused or the complainant for re-testing after considering the grounds against the Report and by passing a speaking order in this regard.

Conclusion: The Board, etc. enjoys independent discretion to allow or disallow the request of the accused or the complainant for re-testing after considering the grounds against the Report and by passing a speaking order in this regard.

---

3. **Supreme Court of Pakistan**
Mst. Kulsoom Rasheed v. Noman Aslam
CMA NO. 284 OF 2021
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._284_281.pdf

Facts: The applicant prays for transfer of the family execution petition from Judge Family Court Islamabad West to the court of competent jurisdiction i.e. Judge Family Court, Karachi (Sindh) in terms of Section 25-A (2-B) of the Family Courts Act, 1964.

Issue: Whether Supreme Court can transfer a case from one province to another province without notice to other party?

Analysis: Bare perusal of the relevant provision reveals that this Court may order the transfer of proceedings pending from one jurisdiction to another more particularly from one Province to another either at the motion of the parties or on its own motion without notice….it would be cumbersome to issue notice to the respondent, who is resident of Karachi. Even otherwise, it will burden the respondent with heavy cost on travelling or contesting the matter here. In order to protect the rights and interest of the parties and to ensure that right as conferred by Article 10A of the Constitution "fair trial" is protected, this Court can always make an order of transfer and the transferee court may take further proceedings from where it is left by the Court from which matter is transferred, only after due service of notice on the respondent.

Conclusion: The Supreme Court can transfer a case from one province to another province without notice to other party.

---

4. **Supreme Court of Pakistan**
PESCO v. Ishfaq Khan and others
Civil Appeal NO. 900 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.a._900_2020.pdf

Facts: The respondent Nos. 1-10 are working as regular Upper Technical Subordinate (UTS) in the appellant department. They filed appeal before the appellant PESCO for their promotion to the post of Junior Engineers/Assistant Managers (BPS-17) against 5% quota reserved for UTS graduate engineers. They filed a Grievance Petition before the Labour Court, Peshawar. The learned Labour Court allowed

the Grievance Petition by directing to adopt rules of Wapda. Appellant failed up to the High Court.

Issue: i) Whether the Labour Court can strike down a policy or notification?

ii) Whether it can direct a statutory body to adopt the rules/policies of another statutory body?

Analysis: It is now established without any reservation that for striking down a policy, notification or an executive order if it infringes the rights of an individual or group of individuals or if it is found to be arbitrary, unreasonable or violative of law or Constitution, the power exclusively rests with the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, and a challenge could be thrown to such a policy, notification or the executive order by way of filing a Constitutional Petition. The Labour Court is not seized with such jurisdiction.

PESCO is a distinct entity, which has its own statutory rules. The law does not permit that a statutory body, who has its own rules, be compelled to adopt the rules of another separate entity. The Labour Court only had the authority to interpret and deal with the respondents under the policy of PESCO, which clearly says that the 5% quota is for induction/direct recruitment and not for promotion….the learned Labour Court had no power to direct the appellant company to adopt the rules of WAPDA or similar constituent companies.

Conclusion: i) The Labour Court cannot strike down a policy or notification.

ii) The Labour Court cannot direct a statutory body to adopt the rules/policies of another statutory body.

---

5. **Supreme Court of Pakistan**
Saddaruddin (since decd) thr. LRs v. Sultan Khan (since decd) thr.LRs etc.
Civil Appeal No.960 of 2017
https://www.supremecourt.gov.pk/downloads_judgements/c.a._960_2017.pdf

Facts: Appellant filed a suit for specific performance by asserting oral sale, prolonged possession of suit property coupled with ownership documents of the defendant.

Issue: i) Whether the detail of oral sale is necessary to be mentioned in the plaint?

ii) Whether prolonged possession coupled with ownership document establishes the sale?

Analysis: i) In cases where the sale is pleaded through oral agreement then the terms and conditions which were orally agreed are to be stated in detail in the pleadings and are to be established through evidence. In such like cases, the plaintiff beside detailing subject matter of the sale, the consideration, detail of striking of the bargain, name of the witnesses in whose presence the said oral agreement to sale was arrived at between the parties and other necessary detail for proving the sale agreement as if it would have been executed in writing.

ii) Mere prolonged possession even coupled with title document of defendant by itself does not establish the claim of ownership unless the sale is established.

Conclusion: i) Detail of oral sale is necessary to be mentioned in the plaint.

ii) The phenomenon of prolonged possession and mere production of title document of defendant by itself does not establish the claim of ownership unless the sale is established.

---

6. **Supreme Court of Pakistan**
Mian Irfan Bashir v. The Deputy Commissioner (D.C.), Lahore
C.P.446-L/2019
https://www.supremecourt.gov.pk/downloads_judgements/c.p._446_l_2019.pdf

Facts: While seized with dispute of the removal of signboards and advertisements from the Mall Road, the High Court while exercising its power under Article 199 of the Constitution also discussed and passed directions on to a totally different issue, which was not even before the Court, regarding wearing of helmets by motorcyclists plying their bikes on the Mall Road.

Issue: Whether High Court has any suo-motu jurisdiction under Article 199 of the Constitution?

Analysis: "On the application of an aggrieved party" is an essential pre-requisite to invoke the constitutional jurisdiction of the High Court under Article 199 of the Constitution. There must be an application and an applicant to invoke the jurisdiction of judicial review as the High Court does not enjoy *suo-motu* jurisdiction under Article 199.Judicial review is the genus and judicial activism or judicial restraint is its subspecies. While exercising judicial review, there comes a point when the decision rests on judicial subjectivity; which is not the personal view of a judge but his judicial approach. One judge may accord greater significance to the need for change, while the other may accord greater significance to the need for certainty and status quo. Both types of judges act within the zone of law; neither invalidates the decision of another branch of the Government unless it deviates from law and is unconstitutional. Activist judges (or judicial activism) are less influenced by considerations of security, preserving the status quo, and the institutional constraints. On the other hand, self-restrained judges (or judicial restraint) give significant weight to security, preserving the status quo and the institutional constraints.

Judicial power is never exercised for the purpose of giving effect to the will of the judge; but always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law. When courts exercise power outside the Constitution and the law and encroach upon the domain of the Legislature or the Executive, the courts commit *judicial overreach*…Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. Judicial overreach is transgressive as it transforms the judicial role of adjudication and interpretation of law into that of judicial legislation or judicial policy making, thus encroaching upon the other branches of the Government and disregarding the fine line of separation of powers, upon which is pillared the very construct of constitutional democracy. Such judicial leap in the dark is also known as "judicial adventurism"

or "judicial imperialism." A judge is to remain within the confines of the dispute brought before him and decide the matter by remaining within the confines of the law and the Constitution. The role of a constitutional judge is different from that of a King, who is free to exert power and pass orders of his choice over his subjects.

Conclusion: High Court does not have any suo-motu jurisdiction under Article 199 of the Constitution.

---

7. **Supreme Court of Pakistan**
Munawar Ahmed Chief Editor Daily Sama v. Muhammad Ashraf and others
Civil Petition No.2580 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2580_2020.pdf

Facts: Suit of respondents for damages to the tune of Rs.1,50,00,000/- for defamation was decreed ex parte as prayed for due to publication of defamatory news item.

Issue: How the quantum of special damages and general damages to be assessed?

Analysis: Special damages are defined as the actual but not necessarily the result of the injury complained of. While awarding special damages, it is to be kept in mind that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record. This may also include out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation.

General damages normally pertain to mental torture and agony sustained through derogatory/defamatory statements. Since there is no yardstick to gauge such damages in monetary terms, therefore, while assessing damages on account of such inconvenience, the Courts apply a rule of thumb by exercising its inherent jurisdiction for granting general damages on a case to case basis…While awarding general damages on account of mental torture/nervous shock is that damages for such suffering are purely compensatory to vindicate the honour or esteem of the sufferer, therefore such damage should not be exemplary or punitive as the sufferer should not be allowed to make profit of his reputation.

Conclusion: Special damages have to be proved by establishing each item of loss with reference to the evidence brought on record. This may also include out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation.

General damage should not be exemplary or punitive as the sufferer should not be allowed to make profit of his reputation. The Courts apply a rule of thumb by exercising its inherent jurisdiction for granting general damages on a case to case basis.

8. **Supreme Court of Pakistan**
Muhammad Idress v.The State, etc
Crl. Petition 742-L of 2019 and Crl. Petition 629-L of 2019
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._742_l_2019.pdf

Facts: While disposing of appeals in a murder case, the High Court placed reliance on the contents of the police diary and the opinion of the investigating Police Officer.

Issue: What is the meaning of phrase, "and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial as envisaged under section 172 Cr.P.C"?

Analysis: The object to require recording of the details in the police dairy appears to be to enable the courts to check the method and manner of investigation undertaken by the investigating officer….The expression "to aid it in such inquiry or trial" indicates that it can be used by the Court for the purpose of enabling itself to have a better understanding of the evidence brought on the record of the case by the prosecution. Inspection of the police diaries can reveal sources of further inquiry, viz, the pointation of some important witnesses that the court can summon, or how the evidence produced was collected to better understand the links between the evidence on the record. The Court can thus use the police dairies for resolving obscurities in evidence through questioning the relevant witnesses or for bringing relevant facts on record to secure the ends of justice through legally admissible evidence, e.g., by summoning as witness those persons who are though referred to in the police diary but not sent up as witnesses by the investigating officer and whose testimony appears to be relevant in the inquiry or trial, or by calling production of some document that appears to be relevant to the matter under inquiry or trial. The Court, however, cannot take the facts and statements recorded in police dairies as material or evidence for reaching a finding of fact: these diaries by themselves cannot be used either as substantive or corroborative evidence. It is important to underline that the police diary is itself not the evidence and therefore inadmissible for having no evidentiary value; it is, however, just a source to help understand the undiscovered or misunderstood aspects of the evidence existing on the record, if any, and introduce new dimensions to the case, leading to discovery and production of new evidence, if required to meet the ends of justice. Whatever the court infers from a police diary must translate into admissible evidence in accordance with law, and the court cannot simply rely on, and adjudicate upon the charge on the basis of, statements made in the police dairy.

Conclusion: See analysis.

9. **Supreme Court of Pakistan**
Saeeda Sultan v Liaqat Ali Orakzai and others
Crl. M.A 62-P/2018in Crl O.P.82/2010
https://www.supremecourt.gov.pk/downloads_judgements/crl.m.a._62_p_2018.pdf

Facts: Petitioner filed criminal miscellaneous application seeking initiation of contempt proceedings for non-compliance of the order of the Supreme Court.

Issue: Whether an order of the Supreme Court can be implemented through execution proceedings as provided under the law or through proceedings in contempt?

Analysis: Civil contempt proceedings cannot be initiated to have a judgment, decree or order of the Supreme Court executed. These proceedings are quasi criminal in nature, as is evident from the penal consequences from the Contempt of Court Ordinance, 2003 and are therefore not warranted in each and every case or cases where the appropriate remedy lies elsewhere such as execution proceedings in this case….It is noted that tool of contempt is often and rampantly misused as a substitute for execution and implementation of the final order, judgment and decree of the trial court as may be upheld, reversed, modified or varied by the apex Court. Where it is a case for implementation of order judgment and decree of the court below simplicitor, the course available is to seek execution in the manner provided for exhaustively in the Code of Civil Procedure and not by way of contempt.

Conclusion: Civil contempt proceedings cannot be initiated to have a judgment, decree or order of the Supreme Court executed.

---

10. **Supreme Court of Pakistan**
Syed Iqbal Hussain Shah Gillani v. Pakistan Bar Council
CPLA No. 3171 of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._6786_2020.pdf

Facts: Petitioner was disqualified from contesting in the election for the seat of Vice President of Supreme Court Bar Association by the Executive Committee of Pakistan Bar Council.

Issue: Whether the Executive Committee of Pakistan Bar Council falls within the definition "person" and writ petition against it is maintainable?

Analysis: Nothing in the Legal Practitioner and Bar Councils Act, 1973 suggests any administrative control being exercised by the Federal or the Provincial Governments over the affairs of the PBC. The PBC is entirely an autonomous body which has independent elections and generates its own funding without any Government control. Thus, the State does not have any financial or other interests in the affairs of the PBC nor does it perform any function in connection with the affairs of Federation, a Province or Local Authority. Thus, neither the PBC nor any of its committee can be regarded as person performing functions in connection with the affairs of Federation, a Province or Local Authority within

the contemplation of Article 199 of the Constitution. Accordingly, it is not amenable to writ jurisdiction.

Conclusion: The Executive Committee of Pakistan Bar Council does not fall within the definition "person" and writ petition against it is not maintainable.

---

11. **Lahore High Court**
Superior College for Girls v. Government of Punjab through Chief Secretary etc.
Writ Petition No. 54008/2020
https://sys.lhc.gov.pk/appjudgments/2021LHC417.pdf

Fact: The petitioner college applied for extension of its registration and addition of subjects before Registering Authority. After the inspection the petitioner's college was recommended for registration and Hope Certificate was issued accordingly. Later on, Higher Education Department issued a letter claiming the Petitioner's application for registration was time barred, hence it could not be granted any affiliation or registration. It also directed Registering Authority to stop entertaining registration of Petitioner College. The contention of the Higher Education Department is that since Secretary Higher Education Department is the Administrative Secretary of the department, hence he can interfere in the registration process.

Issue. Whether the Higher Education Department can interfere in registration process of private colleges before Registering Authority and has any administrative role in this regard?

Analysis The Ordinance provides under Section 3 that all institutions are to be registered and under Section 5 the government shall, by notification, constitute one or more District Committees in each district consisting of at least five members to perform its functions related to registration under the Ordinance. The application for registration is to be moved before the registering authority which is an officer or committee as notified under Section 6 of the Ordinance. This means that the registering authority has been notified by the Government to carry out the registration process. Higher Education Department has no jurisdiction with respect to the registration of an institution under the Ordinance. The contention that Higher Education Department is misconceived as it can help devise policy on the matter but since it has no role under the Ordinance and the Rules, it cannot interfere in the working of Registering Authority.

Conclusion. The Higher Education Department cannot interfere with registration process of private colleges before Registering Authority and it has no administrative role in this regard.

12. **Lahore High Court**
Mirza Arshad Mehmood v. The State.
Criminal Revision No. 53210 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC473.pdf

Facts: The petitioner was convicted and sentenced. He challenged his conviction and sentence, by way of an appeal, but it was dismissed due to non-prosecution.

Issue: Whether, after admission, an appeal can be dismissed due to non-prosecution. If so, what remedy is available to the petitioner against this dismissal?

Analysis: It is a settled legal principle that after admission of a criminal appeal, it cannot be dismissed without adverting to the merits thereof and non-appearance of appellant or his counsel is not a ground for dismissal unless all the raised questions are determined and factual and legal aspects are thrashed as contemplated under section 423, Cr.P.C. Despite all the above mentioned, as per law laid down by the august Supreme Court of Pakistan in case titled "IKRAMULLAH and others versus The STATE" reported as 2015 SCMR 1002, the petitioner may surrender himself before the learned appellate Court and seek resurrection of his appeal.

Conclusion: An appeal preferred by the appellant against his conviction and sentence by the High Court cannot be dismissed for non-prosecution after admission. However, in case of dismissal, the petitioner can surrender himself before the learned Appellate Court and seek resurrection of his appeal.

---

13. **Lahore High Court**
The Chief Administrator Auqaf v. Syed Abid Hussain (Deceased) Through Lrs., Etc
F.A.O.No. 152 of 2005.
https://sys.lhc.gov.pk/appjudgments/2021LHC462.pdf

Facts: The Appellant, Waqf Authority, through notification under The Punjab Waqf Properties Ordinance, 1979, took over the shrine and possession of some agricultural and residential lands of respondents. The respondents assailed the actions of the appellant through institution of petition under Section 11 of the Ordinance before District Judge, which was entrusted to the Additional District Judge, who allowed the same.

Issue: Whether an Additional District Judge can be termed as District Court as per contemplation of Section 11 of the Ordinance?

Analysis: In terms of Section 11 of the "Ordinance" any person claiming any interest, in any waqf property in respect of which a notification under Section 7 has been issued, can bring a petition within thirty days of the publication of such notification before the District Court within whose jurisdiction the waqf property or any part thereof is situated seeking a declaration "District Court" is nowhere defined in the "Ordinance" itself. Section 2(21) of the West Pakistan General Clauses Act, 1956 however defines the terms "District Court" as *the principal Civil Court of original civil jurisdiction of a district; but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction".*

It is thus apparent from the above that a "District Judge" is the Judge of a Principal Civil Court of original jurisdiction, but Section 2(20) does not include the "Additional District Judge" as a Judge of Principal civil court of original jurisdiction alongwith District Judge. This omission seems to be meaningful and purpose oriented when Section 2(17) defines the "Commissioner" and includes Additional Commissioner in it as well. The inclusion of "Additional Commissioner" in the realm of "Commissioner" and simultaneously exclusion of "Additional District Judge" from the definition of "District Judge" under Section 2(20) seems to be intentional on the part of legislature.

Section 3 of Punjab Civil Court Ordinance, 1962 also draws a distinction between the Court of "District Judge" and the "Additional District Judge". Though by virtue of sub-section (2) of Section 6, an Additional District Judge shall discharge such functions of a District Judge as the District Judge may assign to him and in the discharge of those functions, he shall exercise the same powers as the District Judge, but it does not mean that in this way an Additional District Judge can assume the status of "District Court" as per contemplation of Section 11 of the "Ordinance". This view is further strengthened from Section 24 of "C.P.C", wherein the Courts of Additional and Assistant Judges have been deemed to be subordinate to the District Court.

Conclusion: The term "District Court" used in Section 11 of the "Ordinance" is only relatable to "District Judge". An "Additional District Judge" is alien to the provisions contained in the "Ordinance" and as such powers and functions vested under Section 11 of the "Ordinance" of a "District Court" cannot be bestowed upon him. It is only the "District Judge", who is competent to adjudicate upon the petition under Section 11 of the "Ordinance" and the impugned judgments have been passed without any lawful authority and jurisdiction.

---

14. **Lahore High Court**
Muhammad Hanif v. The State
2021 LHC 386
Criminal Appeal No. 280-J of 2019
Murder Reference No.82 of 2015
https://sys.lhc.gov.pk/appjudgments/2021LHC386.pdf

Facts: Appellant was awarded death sentence u/s 302-b PPC for committing Qatl-i-amd.

Issue: What is the effect of delay in post mortem examination of the deceased in a case punishable u/s 302 PPC?

Analysis: The post mortem examination report of the deceased persons reveals that the time between death and post mortem examination is 24 hours. This clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellant while armed escaping from the place of occurrence were not present at the time of occurrence and the delay in the post mortem examinations was caused in order to procure their attendance and formulate a false account of the incident

after consultation and concert. It has been repeatedly held by the august Supreme Court of Pakistan (2012 SCMR 327, 2019 SCMR 956, 2019 SCMR 1068) that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

Conclusion: Delay in post mortem examination is fatal for the prosecution as it reflects absence of eye witnesses from the crime scene and implies that their presence there has been dishonestly claimed to build a false narrative to involve any person.

---

15. **Lahore High Court**
Ms. Unaiza Ahmed and another v. Federation of Pakistan
2021 LHC 425
W.P. No.8105/2021
https://sys.lhc.gov.pk/appjudgments/2021LHC425.pdf

Facts: On the complaint of a whistle-blower, the initiation officer, under section 22 of the Benami Transactions (Prohibition) Act, 2017 (the Act) issued notice to the petitioners with the allegation that petitioner No.1 was a benamidar of her father (petitioner No.2). The notice was challenged on the ground that a whistle-blower can only file a complaint/information if property that is subject matter of allegations of benami is held in relation to the offences listed under section 2(31) of the Act.

Issue: Whether the initiation officer, on a complaint by a whistle-blower, can only issue notice under section 22 of the benami Transactions (Prohibition) Act, 2017 (the Act) to a benamidar if the property is held by him in relation to the offences listed under section 2(31) of the Act?

Analysis: Section 22 of the Act entitles an initiating officer to issue notice, subject to having material in possession and reason to believe that some person is a benamidar of other person. Exercise of jurisdiction by the initiating officer is not subject to or dependent upon the gist/context of the complaint filed or information supplied. It would be an extreme absurdity to hold that initiating officer would first determine the factum of offences committed, under relevant statutes and thereafter – subject to the requirement of grant of approval under section 21 – issue notice. It is for the first petitioner to establish that property held was not as benamidar of second petitioner, during the course of which proceedings status of the property – accounts – would be determined. And if it is found that property is held as benamidar of second petitioner, law will take its course. By no stretch of imagination or upon invoking any principle of statutory interpretation, section 2(31) of the Act can be held to control and regulate section 21 and 22 of the Act – conferring jurisdiction accordingly. Second fatal defect in the argument is that it implies that whistle-blower shall first make self-determination to ascertain that whether property alleged as benami, bears some relation to any of the offences

mentioned and thereafter file complaint or provide information, which clearly defeats the purpose of the Act.

Conclusion: For issuance of notice u/s 22 of the Act by the initiating officer it is not necessary that the property, that is subject matter of the allegation of benami, is held by benamidar in relation to offences specified in section 2 (31) of the Act even if the notice is issued in response to the complaint by a whistle-blower.

---

16. **Lahore High Court**
Ejaz Ahmad v. The State
2021 LHC 443
Criminal Revision No.57 of 2020
https://sys.lhc.gov.pk/appjudgments/2021LHC443.pdf

Facts: A prosecution witness was partly cross-examined by the defence when the court accepted application by the prosecution for his re-examination.

Issue: Whether in criminal trial permission for re-examination of a witness can be granted prior to completion of cross-examination on that witness?

Analysis: Article 133 of the Qanun-e-Shahadat, 1984 prescribes the order in which the witness is to be examined; first examination-in-chief, then cross-examination, and then (if the party calling him so desires) re-examination. The aforesaid provision, therefore, lays down a procedure as to how a witness called on behalf of a party is to be dealt with at the trial and the order in which the witness has to be examined by each party (prosecution and accused) during the trial. The term "already examined" as used in section 540 of the Code of Criminal Procedure, 1898 can be easily construed to mean that a witness stands already examined when the order in which the witness is to be examined prescribed by the Article 133 of the Qanun-e-Shahadat, 1984 has been followed and the examination of the said witness has been completed. The essential requirement is that the witness sought to be recalled and re-examined under the provisions of 540 of the Code of Criminal Procedure, 1898 must have been already examined. In this case, the learned trial Court fell in error as it proceeded to allow the application filed by the prosecution under section 540 of the Code of Criminal Procedure, 1898 seeking the recall and re-examine a witness even prior to the conclusion of the cross- examination on behalf of the accused on the said prosecution witness.

Conclusion: In criminal trials a witness cannot be permitted to be re-examined before conclusion of cross-examination on him.

17. **Lahore High Court**
Muhammad Arif Ameen etc Versus The Province of Punjab etc
ICA No.33280/2020
https://sys.lhc.gov.pk/appjudgments/2021LHC484.pdf

Facts: Appellants are ex-Army Personnel who were recruited by the Punjab Police on contract basis. They filed constitutional petitions seeking regularization of their service. Their matter was considered by the Scrutiny Committee, which held that appellants failed to qualify the eligibility criteria for regularization, hence not only their services were not regularized but they were also served with one month notice after which, their contract services will deemed to be terminated. The appellants being aggrieved filed constitutional petitions. Those petitions were dismissed, hence these Intra Court Appeals.

Issue: Whether, Intra Court Appeals, under the proviso to subsection 2 of section 3 of the Law Reforms Ordinance, 1972 (Ordinance), are maintainable if the constitutional petition brought before the High Court arises out of any proceeding, in which, the law applicable provide for at-least one appeal or one revision or one review to any court, tribunal or authority against the original order?

Analysis: The notices for termination of services which were impugned in the constitutional petitions decided by learned Single Bench, indeed arose out of the proceeding under the provision of the Act, against which, remedy of appeal being available under section 12 of the Act, these ICAs are not maintainable in view of aforesaid provision of the Ordinance.

Conclusion: Where a statute under which the impugned order is passed, itself provides the remedy of appeal, ICAs are not maintainable.

---

18. **Lahore High Court**
Suraj Cotton Mills Limited etc. v. Federation of Pakistan etc.
2021 LHC 449
WP No.35089/2020
https://sys.lhc.gov.pk/appjudgments/2021LHC449.pdf

Facts: SNGPL applied to OGRA for determination of its revenue requirements for the financial year. Under Section 8(1) of the Oil and Gas Regulatory Authority Ordinance, 2002, OGRA fixed the provisional tariff at the rate of Rs.464.94 MMBTU and forwarded the tariff to Federal Government for advice. The Federal Government, though was required to render its advice within 40 days, gave the advice after a gap of 14 months. OGRA then notified the sale price of the natural gas through the impugned notification @ Rs.600 MMBTU.

Issue: i)How and by whom the 'prescribed price' and the 'sale price' of natural gas are determined under the Oil and Gas Regulatory Authority Ordinance, 2002 (Ordinance) and Natural Gas Tariff Rules, 2002 (Rules)?
ii)Whether the petitioners, on the failure of the Federal Government and OGRA of fixing the sale price within the time period given in the Ordinance, could be given

the benefit of paying gas tariff @ of Rs.464.94 MMBTU instead of the notified tariff @ Rs.600 MMBTU?

Analysis: i)As per provisions of the Ordinance and the Rules, OGRA makes a determination of the estimated revenue required by a licensee for natural gas and issues the prescribed price for each licensee for a given fiscal year. The prescribed price is the amount determined which represents the amount a licensee is entitled to receive from each category of its retail consumer of natural gas in order to achieve its total revenue requirements. OGRA is then required, not later than three days of each determination, to seek advice from the Federal Government with reference to the sale price for each category of retail consumer of natural gas. The sale price is the price notified under Section 8 which a licensee for natural gas is entitled to recover against each category of retail consumer. Hence important to note is that OGRA issues the prescribed price while the Federal Government notifies the sale price. In the event of failure of the Government to advise the Authority within the stipulated time and the prescribed price for each category of retail consumer is higher than the most recently notified sale price for that category, then OGRA is required to notify the prescribed price as determined by the Authority under Section 8(1)(2) of the Ordinance to be the sale price for the said category. Hence Section 8 casts an obligation on the Federal Government to issue its advice within 40 days on the sale price and it also casts an obligation on OGRA to make a determination and issue a notification where the Federal Government does not issue its advice in 40 days.

ii) The Petitioners do not get any benefit on account of the fact that they did not challenge the prescribed price issued by OGRA on 03.7.2014, the final price issued by OGRA on 27.11.2015 and the next notification by OGRA on 30.12.2016. After a considerable delay, they filed writ petitions before the Lahore High Court, Multan Bench and originally obtained interim orders, restraining them from paying the notified price as per the impugned Notification dated 31.8.2015 and then sought a direction to treat their petitions as reviews before OGRA for the purposes of the notified sale price in the impugned Notification dated 31.8.2015. Until the filing of the writ petitions, the Petitioners, without any objection, continued to pay at the notified rate of Rs.600 MMBTU as per the impugned Notification dated 31.8.2015. After the decision of the Hon’ble Sindh High Court at Karachi on 6.5.2016, they challenged the impugned Notification and stopped making payments. They then appeared before OGRA in the form of a review which remedy they never availed during the time it was available to them. Nonetheless they were heard and the reviews were dismissed. The Petitioners have no right to decide what the tariff should be for any particular fiscal year on the basis of which they can file constitutional petitions. Tariff determination is a lengthy process which requires many factors to be considered. If at all they were aggrieved during the process of determination of the prescribed price, remedy in form of review was available to them under the Ordinance. Moreover the Petitioners want to pay at the rate of Rs.464.94 MMBTU as opposed to the notified rate of Rs.600 MMBTU. They were unable to explain why they should be required to pay at the rate of Rs.464.94 MMBTU when they were paying at the rate of Rs.488.23 MMBTU as notified on 1.1.2013. Furthermore the final tariff for

the year 2014-15 was Rs.528.19 MMBTU as determined by OGRA. Hence there is no logic in seeking to pay Rs.464.94 MMBTU

Conclusion: i) OGRA is to fix the prescribed price and in not later than three days, is to seek advice from the Federal Government for notifying the sale price. The Federal Government is to render its advice within 40 days, and OGRA notifies the sale price. Where the Federal Government fails to render the advice and the prescribed price is higher than the most recently notified sale price, OGRA is required to notify the prescribed price to be the sale price for the concerned category.

ii) The Petitioners were held not entitled to any relief since:

i. They did not challenge prescribed price dated 03.7.2014, the final price dated 27.11.2015 and next notification dated 30.12.2016;
ii. They accepted the impugned notification by continuing to pay gas tariff at the rate fixed by it;
iii. They challenged the impugned notification after a considerable delay, that too only after a favourable decision by the Sindh High court;
iv. They did not timely avail the remedy of review against the impugned notification that was available to them under the ordinance;
v. They have no right to decide the amount of gas tariff they want to pay in a fiscal year;
vi. There is no logic behind the request of the petitioners of making payment @ Rs. 464.94 MMBTU when per notification dated 01.01.2013 they had been making payment @ Rs.488.23 MMBTU and the final tariff for the year 2014-15 was fixed @Rs.528.19 MMBTU.

---

19. **Peshawar High Court**
Sardar Attique ur Rehman v. The State & 05 others
Writ Petition No. 510-N2019
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-510-OF-2019..15022021125906.pdf

Facts: Police cancelled an FIR on the ground that complainant failed to provide evidence against the named accused and Judicial Magistrate agreed with the opinion of the police without recording any reason of his own and without providing any opportunity of hearing to the complainant.

Issue: Whether Magistrate is bound to give his own reasons while accepting opinion of police for cancellation of an FIR and whether it was essential to provide complainant an opportunity of hearing ?

Analysis: The learned Judicial Magistrate simply agreed with the opinion of the police officer and failed to record his own reasons for agreeing with the police. While exercising power under section 173 (3) Cr.P.C, the learned Magistrates are not to act as pawns in the hands of the police and pass mechanical orders without

application of their conscious mind to the facts and material placed before them because the opinion expressed by the police is not binding upon them.

The learned Magistrate must be made to realize that the power to cancel a police case is of wide amplitude which has the effect of bringing a halt the criminal prosecution which otherwise would entail a detailed process. Such a power, therefore, by its very nature, cannot be designed to be exercised on mere ipse dixit of the police otherwise, the very purpose for conferring this power on the Magistrate on responsible level in supervisory capacity would stand defeated.

One of the basic concepts of Sharia in the administration of justice (adl) is the hearing of both the parties by the Qazi or Judge passing the order. This is known as the principles of natural justice**.**

In all proceedings by whatsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting "the person or property or other right of the parties concerned" this rule applies even though there may be no positive words in the statute or legal document whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness.

Conclusion: The power of Magistrate to cancel F.I.R is supervisory in nature and he cannot act on the *ipsi dixit* of the police. He is required to pass speaking order by recording his own reasons while cancelling F.I.R and that too after providing an opportunity of hearing to the complainant.

---

20. **Sindh High Court**
Karachi Golf Club (Private) Limited vs. Province of Sindh & Others
CPD Nos. 7042 of 2018, 7409 of 2018 and 8302 of 2019
http://43.245.130.98:8056/caselaw/view-file/MTUwMDIyY2Ztcy1kYzgz

Facts: Under the Sindh Sales Tax on Services Act 2011 ("Act") clubs are required to collect / pay sales tax in respect of services being rendered to their members. Petitioners contended that private members clubs, engaged in private recreational activity, fell outside the scope and ambit of the Act, read in conjunction with the doctrine of mutuality; hence, membership fees and subscription charges could not be considered taxable services.

Issue: Whether membership / entrance fees and subscription charges (monthly and / or annual), received by members' clubs, from their members, fall within the purview of sales tax?

Analysis: Broadly speaking a club may be classified as a members' club or a proprietary club. The basic difference between a members' club and a proprietary club is that the former is characterized by a contractual relationship between the members inter se, whereas the latter is characterized by a contractual relationship between each member and the proprietor.

The doctrine of mutuality is the principle which obligates an association of persons who are agreed inter se, not to derive profits or gains but to achieve, through their mutual contributions, a purpose or benefit in which all members should participate or would be entitled to do so. The essence of this doctrine, in nexus with taxation matters, denotes that receipts that fall within the purview thereof are exempt from taxation since monies derived from oneself cannot be subjected to taxation. The structure of the doctrine rests upon three primary pillars, in the light of judicial interpretation from time to time, being: the absence of commerciality; presence of complete identity between the contributor and the participant; and impossibility for the contributors to derive profit from activity, where they are the contributors as well as the recipients of the funds.

Section 333 of the Act defines taxable services inter alia as services provided in the course of an economic activity. Economic activity has been defined in Section 434 of the Act and specifically excludes private recreational pursuits. In order to reconcile the doctrine of mutuality with the Act, a service may only be considered taxable if it is rendered in the course of economic activity and the statutory definition of economic activity does not encompass rendering of services to oneself. In the context of income tax the doctrine is inter alia applied when there is complete identity between the contributor and the participant; whereas, in the analogous context of sales tax on services the doctrine may apply when there is a confluence of identity between the provider and the recipient of the service; generating the very income that is excluded from the purview of tax pursuant to the doctrine of mutuality.

Charging section of the Act, read with the doctrine of mutuality, does not encumber services, rendered by a members' club to its members, within the ambit of taxable services, hence, a tariff heading, originating per the definition clause, could not override the charging section of the Act itself. It is in the same context that the definition of club, per section 2(22)40 of the Act has to be considered.

Rule 42(2)(a) of the Sindh Sales Tax on Services Rules 2011 ("Rules") also envisages the inclusion of membership fee and subscription charges within the ambit of taxable services; however, but said rule has to be read to exclude the same in the instance that the same are received by members' clubs from their members. Since the Act in itself has been interpreted to exclude the taxability of membership fee and subscription charges, in the context of members' clubs, therefore, no interpretation can be given to the subordinate rules exceeding the remit of the statute itself.

The subscription charge, monthly or annual, is an aggregate fee paid periodically to encompass entitlement to the facility of indistinct benefits. This amount is payable irrespective of whether the respective facilities are availed or otherwise. The said fee is paid at the time that a person is inducted as a member of a club and in any event exclusive of any services that may be rendered as a consequence of membership. Entrance fees paid by the members for obtaining membership of a members' club could not be said to be received out of any profit motive; hence, the doctrine of mutuality was attracted. Therefore, this fee cannot be considered

taxable within meaning of the Act. Membership / entrance fees and subscription charges, obtained by members' clubs from their members, do not constitute monies generated from economic activity and do not accrue out of rendering of any taxable service, per the interpretation of the relevant provisions of the Act; hence, fall outside the purview of the Act.

Conclusion: Membership / entrance fees and subscriptions charges (monthly and / or annual), obtained by members' clubs from their members, do not fall within the purview of sales tax, as per reading of the Act synchronized with the doctrine of mutuality.

---

21. **Sindh High Court**
Collector of Customs vs. Super Star Company
SCRAs 311 to 313 of 2020
http://43.245.130.98:8056/caselaw/view-file/MTUwMDI1Y2Ztcy1kYzgz

Facts: Consignments of arms and ammunition imported by the respondent were subjected to show cause notices and the respondent was asked to answer as to why the consignments ought not to be confiscated since they had remained un-cleared at the port since 2016. Confiscation of the consignment was ordered on the premise that the consignment arrived after the cut-off date, as the Ministry of Commerce vide memorandum No. 17(I)/2016-Imp-I dated 14.09.2017 has allowed for release of those delayed shipments of Arms and Ammunition imported in contravention of SRO 1112(I)/2014 dated 16.12.2014, which arrived up to 20.10.2015. Confiscation order was set aside in appeal by the learned Tribunal, while holding that estoppel shall operate against the department as SRO could not override the right which has been acquired to the appellants.

Issue: Whether a beneficial notification issued during the pendency of adjudication proceedings can be given retrospective effect?

Analysis: Show cause notice/s to the respondents were issued in 2018, post the clearance timeframe enunciated in SRO 1112; however, the respondents were required to demonstrate as to why the relevant import documentation had not been submitted till that date. The ostensible reasons for the delay in seeking clearance, per the respondent, was belated arrival due to supplier issues and the change in the nature of authorization from value based to quantity based. However, the relevant consignments did in fact arrive post the cut-off date provided in SRO 1112. During the pendency of the adjudication proceedings, before the Additional Collector Adjudication, SRO 772(I)/2018 ("SRO 772") was issued on 14.06.2018 and therein SRO 1112 was repealed. The adjudicating officer did not appreciate the aforementioned SRO in its proper perspective and proceeded to order the outright confiscation of the consignments, pursuant to a notification admittedly repealed during the pendency of proceedings there before. No case has been set forth to disentitle the respondent to the retrospective beneficial effect of SRO 772; especially in view of the admitted factum that even in respect of the tenancy of the repealed SRO 1112, waivers were granted from the prescription of timelines therein contained.

Conclusion: The beneficial notification issued during the pendency of adjudication proceedings can be given retrospective effect.

---

22. Sindh High Court
Advocate Sikandar Ali. V. Provincial Selection Board High Court of Sindh, Karachi & others
Constitutional Petition No. D-281 of 2020
http://43.245.130.98:8056/caselaw/view-file/MTUwMDUxY2Ztcy1kYzgz

Facts: The Petitioner questioned the scrutiny of the Provincial Selection Board (the "Board"), alleging that there was an omission on its part to properly examine and verify the character and integrity of Respondent No.2. According to the petitioner, Respondent No.2 who has been selected as the additional District & sessions Judge is involved in forgery and malpractices. Petitioner submitted that the Board had not properly scrutinized such antecedents when making its recommendation in the matter, hence the recommendation ought to be held in abeyance until a comprehensive inquiry was conducted.

Issue: Whether the process of the Provincial Selection Board admits scrutiny under Article 199 of the Constitution?

Analysis: After examining the scope of Article 199 of the Constitution, particularly sub-article (5), as well as Articles 176 and 192, through seminal judgment august Supreme Court in the case of Gul Taiz Khan (CA 353-355/2010) held that executive, administrative or consultative actions of the Chief Justices or Judges of a High Court were amenable to the constitutional jurisdiction of a High Court. The aforementioned binding precedent removes all doubt that the present petition is not maintainable to the extent that it seeks to assail the process and proceedings of the Board. It also merits consideration that the petitioner has come forward against what is merely a recommendation, with the Respondent No.2 not yet having been appointed to any post. Even otherwise, it is axiomatic that any such determination has to necessarily be predicated on findings of fact based on evidence.

As the Petitioner has miserably failed to establish infringement of any of his fundamental rights; hence has no locus standi to get any relief under Article 199 of the Constitution.

Conclusion: The Hon'ble Court held that neither the petition was maintainable nor the petitioner could establish his locus standi; hence while observing that the respondents Nos. 3 and 4 are at liberty to conduct a proper inquiry into the matter, and the findings may be placed before the competent authority, dismissed the petition.

23. **Sindh High Court**
MA No.8156/2020
CR. APPEAL NO.371/2020
http://43.245.130.98:8056/caselaw/view-file/MTQ5OTE4Y2Ztcy1kYzgz

Facts: Appellant, who is transgender, was attacked by other prisoners when he was confined in Landhi Jail. He brought the matter before the Court in pending appeal and contended that action was negation of Sindh Prisons Rules and Correction Services Act 2019 as well failure of the Jail Incharge in adhering to the relevant rules. Senior Superintendent, Central Prison contended that there was a capacity issue hence it was not possible to provide separate barrack for transgenders, however a separate room with all facilities was provided to appellant.

Issue: Whether a separate barrack for transgender(s) was to be allocated in the Prison?

Analysis: None can deny that 'transgender', being citizen of Pakistan, always had all the privileges and guarantees available to any other gender because such guarantees and privileges are never confined to a particular 'gender' but to the 'person'. The definition of 'person' always includes the 'transgender'. Such rights and privileges shall always be available to a transgender even while undergoing punishment as 'prisoner' or 'under trial prisoner'. It is an undeniable position that the appellant was attacked by other prisoners when he was confined in Landhi Jail which, prima facie, was negation of referred rules as well failure of the Jail incharge in adhering to the relevant rule.

The capacity issue is not a sufficient excuse when it comes to a question of fundamental rights. The Senior Superintendent, Central Prison, Karachi, however, appears to be no aware of the 'Transgender Persons (Protection of Rights) Act, 2018.

The failure of the Government in discharging its defined obligations is not worth appreciating but this alone cannot be an excuse for the jail authorities in not keeping the transgender persons separate from male and female prisoners particularly when the Rule 38 of above referred rules requires so as mandatory obligation.

All the jail authorities shall ensure compliance of such mandatory rule till the time the government discharges its obligation, as detailed above. The jail authorities shall not come forward with an excuse of capacity issue rather shall ensure satisfaction of the spirit of the rule which is 'transgender shall be kept separate'.

Under these circumstances, judicial propriety demands notice to Advocate General Sindh and Home Secretary, Government of Sindh, who on next date of hearing, shall place on record the initiatives of the government towards discharge of its obligation(s), as per the said Act.

Conclusion: Under the Rule 38 of Sindh Prisons Rules and Correction Services Act 2019 all the jail authorities shall ensure compliance of mandatory rule of keeping convicted or under trial transgender in separate barrack. An excuse of capacity issue should not come in the way to the compliance of the rule.

24. **Sindh High Court**
Waste Busters Limited vs. Province of Sindh & Others
CPD 4633 of 2017
http://43.245.130.98:8056/caselaw/view-file/MTQ5OTcyY2Ztcy1kYzgz

Facts: Petitioner challenged deduction of sales tax rested on a private commercial invoice, a copy of a cheque and an unsigned breakup of amounts, pursuant to a contract between two parties.

Issue: Whether any contractual dispute of which there remains no corroboration on record can be questioned in Constitutional jurisdiction of the High Courts?

Analysis: Primary grievance appears to be a private contractual matter, between parties to the contract, and the official respondents seem to have been impleaded to seek the adjudication of the grievance before this court, in the exercise of its writ jurisdiction. Masquerade of pleadings to invoke the Constitutional jurisdiction of the court is undesirable.

Conclusion: Contractual disputes do not merit adjudication vide recourse to writ jurisdiction.

---

25. **Supreme Court of the United States**
FNU Tanzin v. Tanvir
https://www.supremecourt.gov/opinions/20pdf/19-71_qol1.pdf/

Facts: Three Muslim men born outside of the U.S. but living lawfully inside the country, were approached by FBI agents and asked to act as informants. Citing their religious beliefs, the three men declined. FBI agents then retaliated against their refusal to act as informants by placing them on the national "No Fly List." They sued the agents in their official and individual capacities in U.S. federal court under the First Amendment, the Fifth Amendment, and the Administrative Procedure Act. The U.S. District Court dismissed the claims against the agents in their individual capacity. The three men appealed to the 2nd Circuit Court, which reversed the lower court's ruling. FBI Special Agent moved for the circuit court to rehear the case. The circuit court also denied the motion. Then one of the men petitioned the U.S. Supreme Court for a hearing.

Issue: Whether the provision in RFRA (RELIGIOUS FREEDOM RESTORATION ACT) allowing litigants to 'obtain appropriate relief against government,' authorizes an award of money damages against federal employees sued in their individual capacities.

Analysis: The court affirmed the 2nd Circuit's decision in an 8-0 ruling, holding that under the RFRA, individuals may sue government officials in their individual capacities and obtain monetary damages. Justice Clarence Thomas delivered the opinion of the court. In his opinion, he wrote that, based on the RFRA's text, litigants may sue government employees in their personal capacity. He also wrote that "appropriate relief" under the RFRA depended on the context. In this case's context, the court held that "appropriate relief" included money damages. Justice Amy Coney Barrett did not take part in the case's opinion.

Conclusion: It was concluded that the RFRA's express remedies provision permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities. The judgment of the United States Court of Appeals for the Second Circuit was affirmed.

---

26. **United Kingdom Supreme Court**
T W Logistics Ltd v. Essex County Council[2021] UKSC 4
https://www.bailii.org/uk/cases/UKSC/2021/4.html

Facts: This case was about the law relating to the registration of a town or village green ("TVG") under the Commons Act 2006. The use of the phrase "town or village green", particularly the word "green", conjures up an image of the archetypal village green with its area of grass where local inhabitants can walk and play. But the TVG in issue, as registered by the defendant/respondent, Essex County Council ("the Council"), was an area of concrete of some 200 square meters (which shall be referred to as "the Land") on, or close to, the water's edge in a working port and across which port vehicles, including heavy goods vehicles ("HGVs"), are driven.

Issue: Whether the registration of the Land as a TVG would have the consequence that the continuation of the pre-existing commercial activities of the land owner namely TW Logistic (TWL) would be criminalised under the Victorian statutes?

Analysis: The conclusion regarding the true meaning and effect of the Victorian statutes which we have reached, is a consequence of the application of ordinary principles of statutory interpretation. The criminal law is often formulated by reference to general standards of behaviour, e.g. in relation to the offences of careless and inconsiderate driving and gross negligence manslaughter and the use of the standard of being "reasonably practicable" in the offences under the health and safety legislation. A court is not entitled to depart from the meaning of a statutory provision arrived at on the basis of ordinary principles of interpretation, on the grounds that it might have preferred greater precision in the formulation of an offence. Indeed, there is a long-standing principle of statutory interpretation, designed to avoid cases of doubtful penalisation, which precisely deals with any problems which might arise from a lack of precision in the formulation of an offence (see *Tuck & Sons v Priester* (1887) 19 QBD 629, 638 per Lord Esher MR; *Craies on Legislation*, 12th ed (2020), para 19.1.14).

Interpreting the Victorian statutes in this way leads to a sensible and readily comprehensible result in the present case, which is consistent with the overall legislative scheme in relation to TVGs. Here, TWL has the legal right in the period after the registration of the Land as a TVG to carry on with what it has been doing previously on the Land, its activities are "warranted by law". TWL would therefore not be committing an offence under the Victorian statutes in continuing its pre-existing commercial activities. The same is true in relation to

the common law offence of public nuisance, which continues to be relevant in this context.

Conclusion: The commercial activities would not be criminalised by the Victorian statutes where those activities are "warranted by law". This underlying feature of the Victorian statutes is reflected in the words "without lawful authority" in section 12 of the 1857 Act.

---

27. **Supreme Court of the Australian Capital Territory**
Benning v. Richardson [2021] ACTSC 34
http://www.austlii.edu.au/cgibin/viewdoc/au/cases/act/ACTSC//2021/34.html

Facts: The plaintiff was injured in a motor vehicle accident. She was an intoxicated passenger in a vehicle driven by an intoxicated driver (defendant). The plaintiff claimed that the accident was caused by the negligence of the defendant therefore sought damages as a result of that negligence. The defendant admitted the breach of duty of care owed to the plaintiff by driving while intoxicated. But he took the defence plea that there should be a substantial finding of contributory negligence because the plaintiff voluntarily departed in the vehicle when she knew or ought reasonably to have known that the driver was intoxicated. In addition, she was not wearing a seatbelt.

Issue: Whether the contributory negligence arises from the fact that plaintiff voluntarily departed in the vehicle of a drunken driver(defendant) and she was also not wearing a seat belt?

Analysis: As for as the entering of the vehicle with an intoxicated driver is concerned, the plaintiff took the plea that if she was so drunk that she could not appreciate the danger then there should not be a finding of contributory negligence. The court held that the issue is not whether a reasonable person in the intoxicated passenger's condition would realize the risk of injury in accepting the lift. It is whether an ordinary reasonable person - a sober person - would have foreseen that accepting a lift from the intoxicated driver was exposing him or her to a risk of injury by reason of the driver's intoxication. If a reasonable person would know that he or she was exposed to a risk of injury in accepting a lift from an intoxicated driver, an intoxicated passenger who is sober enough to enter the car voluntarily is guilty of contributory negligence. In addition, she was aware that there were other taxis present and the option to get home by a safe means was available. Taking these factors into account, the plaintiff, as a reasonable person, would have foreseen that, entering as a passenger in a car driven by the intoxicated defendant, would expose her to a risk of serious injury.

It was clear both from the blood analysis and from the CCTV footage of the hotel that the plaintiff was well intoxicated when departing. In such a condition that she may not have considered wearing the seatbelt. Moreover, it was visible from the snap taken after the accident, the seatbelt was in its clasp, the plaintiff's head had been striking with the windscreen, was sufficient for court to conclude that the

defendants have established that the plaintiff was not wearing a seatbelt when the collision occurred.

Conclusion: The contributory negligence arises from the plaintiff's travelling in the vehicle with an intoxicated driver. Moreover, not wearing a seatbelt was also a contributory negligence on the part of the plaintiff. As a result an overall 35% concession is granted to defendant from the total amount of damages assessed against.

---

28. **Supreme Court of India**
Civil Appeal No 821 of 2021
Union Public Service Commission v. Bibhu Prasad Sarangi and others
https://main.sci.gov.in/supremecourt/2020/9660/9660_2020_36_5_26705_Judgement_05-Mar-2021.pdf

Facts: The appellant moved before the High Court in proceedings under Article 226 of the Constitution for challenging an order of the Central Administrative Tribunal. The High Court upheld the decision of Tribunal by holding that Tribunal has not committed any jurisdictional error and no interference is warranted however there has been no independent application of mind to the controversy by the High Court and paragraphs from the judgment of Tribunal were reproduced by the High Court.

Issue: Whether mode/manner of decision adopted by High Court without discussing the rival merits of parties and reproducing paragraphs of Tribunal's decision, is justified?

Analysis: Supreme Court held that:

Cutting, copying and pasting from the judgment of the Tribunal, which is placed in issue before the High Court, may add to the volume of the judgment. The size of judicial output does not necessarily correlate to a reasoned analysis of the core issues in a case.

Technology enables judges to bring speed, efficiency and accuracy to judicial work. But a prolific use of the 'cut-copy-paste' function should not become a substitute for substantive reasoning which, in the ultimate analysis, is the defining feature of the judicial process. Judges are indeed hard pressed for time, faced with burgeoning vacancies and large case-loads.

Crisp reasoning is perhaps the answer. Doing what the High Court has done in the present case presents a veneer of judicial reasoning, bereft of the substance which constitutes the heart of the judicial process. Reasons constitute the soul of a judicial decision. Without them one is left with a shell. The shell provides neither solace nor satisfaction to the litigant.

How judges communicate in their judgments is a defining characteristic of the judicial process. While it is important to keep an eye on the statistics on disposal, there is a higher value involved. The quality of justice brings legitimacy to the judiciary.

Conclusion: Supreme Court held that the High Court having not carried out the exercise, we set aside the impugned judgment and order of the High Court. The writ petition under Article 226 shall stand restored to the file of the High Court.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
   COVID-19, Leases & Rent: The Legal Viability of Frustration by Force Majeure in Lease Agreements by *Raghav Kacker& Ruchi Chaudhury*

2. **HARVARD LAW REVIEW**
   https://harvardlawreview.org/wp-content/uploads/2018/05/1924-1978_Online.pdf
   The Morality of Administrative Law by *Cass R. Sunstein & Adrian Vermeule*

3. **COURTING THE LAW**
   https://courtingthelaw.com/2021/01/27/commentary/no-more-dignity-trials/
   No More Dignity Trials by *Laiba Qayyum*

4. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12457
   Reason-Giving in Administrative Law: Where are We and Why have the Courts not Embraced the 'General Common Law Duty to Give Reasons'? by *Joanna Bell*