LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(15-05-2021 to 31-05-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

SELECTED ARTICLES

1. **Lahore High Court**
Muhammad Javed Azmi v. Javed Arshad
Case No. Civil Revision No.31217/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1101.pdf

Facts: Petitioner filed leave to appear and defend the suit based on cheque in which he asserted that he issued a blank cheque as guarantee in 2017. Respondent filed an application for summoning record of the bank which was accepted and summoned record revealed that cheque book was issued in 2018. Finding the stance of petitioner incorrect, the trial court rejected application for leave to appear and defend.

Issue: i) Whether the plaintiff may file a miscellaneous application before decision on leave to appear and defend a suit filed under O. XXXVII CPC?
ii) Whether a court may make an inquiry before decision on leave to appear and defend in a suit filed under O. XXXVII CPC to satisfy itself as to the genuineness and plausibility of the defence of the defendant?

Analysis: i) There is no restriction imposed upon the plaintiff in a suit under Order XXXVII, CPC, to file an application, to bring forth such facts in the notice of the trial court which can enable the trial court to satisfy itself as to genuineness or otherwise plausibility of the defence taken by the defendant in an application for leave to appear and defend the suit before decision on the said application for leave to defend.
ii) In order to satisfy itself to the contents of leave to appear and defend, the court is required not to act in a mechanical manner. Instead the trial court has to apply its judicial mind to the contents of the application for leave to appear and defend. The trial court is not debarred to probe and conduct such an inquiry so as to satisfy itself as to the genuineness and plausibility of the defence of the defendant. For this purpose the plaintiff in such suits is not debarred to move an application for summoning a document in custody of any person, which prima facie establishes before the court that the defence taken in the application for leave to appear in the summary suit is sham and illusory, which is precisely the case in the matter in hand.

Conclusion: i) Plaintiff may file a miscellaneous application before decision on application for leave to appear and defend in a suit filed under O. XXXVII CPC to bring forth such facts in the notice of the trial court which can enable the trial court to satisfy itself as to genuineness or otherwise plausibility of the defence taken by the defendant in an application for leave to appear and defend the suit.
ii) The trial court is not debarred to probe and conduct an inquiry to satisfy itself as to the genuineness and plausibility of the defence of the defendant.

2. **Lahore High Court**
Yaqoob Ali (Deceased) through His Legal Heirs and others v. Muhammad Ayub and others
W.P No.1447 of 2017
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC1046.pdf

Facts: An ex-parte decree was set aside on the application u/s 12(2) of the respondents on one of the grounds that proper and due service was not effected on the respondents.

Issue: Whether flaw in the service of Summons is a sufficient ground to set aside ex-parte judgment under section 12(2) CPC?

Analysis: The main object of service of summons is that defendant should have notice of case against him and the court in which he has to appear. The defendant should be given requisite information at a time when he is able to appear and defend the suit. In order to ensure due service all that is required is that there should be substantial compliance with the provisions relating to service of summons. Due service is the first fundamental right of a person, who has to defend his cause before court of law which is even duly recognized by the principles of natural justice. Due service of summons is not a formality but a matter of such importance that courts are obliged that before deciding the service to be sufficient must be satisfied that all requirements of law have been strictly complied with. This becomes more inevitable when the service is not personal but substituted. Though Rule 20 provides the mechanism of substituted service but before resorting to said provision of law it is incumbent upon the Court to ensure the compliance of Rules 16, 18 & 19 of Order V.

Conclusion: Non-adherence to the mandatory provisions would render the process invalid and the edifice built thereon would automatically fall down. Glaring flaws in the mode of service when floating on the surface of record are sufficient to erode the validity of ex-parte judgment and decree.

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3. **Lahore High Court**
Ameer Hussain v. The Govt of Punjab
Writ Petition No.31145/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1226.pdf

Facts: The Petitioner challenged his detention, under section 3 of the Punjab Maintenance of Public Order Ordinance, 1960, (Ordinance) through Constitutional Petition.

Issue: i) Whether a representation under section 3(6) of the Ordinance can be considered to be an "adequate remedy" within the meaning of Article 199 of the Constitution so as to bar a person from filing a constitutional petition?

ii) Whether preventive detention makes an inroad on the personal liberty of a citizen without the safeguards of a formal trial before a judicial tribunal?

Analysis: It was observed that when the order of an executive authority regarding detention of a particular person is challenged under Article 199 of the Constitution, the High Court has limited jurisdiction because the remedy of judicial review cannot be treated as appeal or revision. The Court cannot substitute its discretion for that of the administrative authority. It can only see whether the order of detention is reasonable and objective. Moreover with regard to preventive detention, it was opined that the Court has further to be satisfied, in cases of preventive detention, that the order of detention was made by the authority prescribed in the law relating to preventive detention and that every requirement, of the law relating to preventive detention had been strictly complied with. The edifice of satisfaction is to be built on the foundation of evidence because conjectural presumption cannot be equated with satisfaction; it is subjective assessment and there can be no objective satisfaction. Moreover, the grounds of detention should not be vague and indefinite and should be comprehensive enough to enable the detenue to make representation against his detention to the authority, prescribed by law.

Conclusion: (i) The Hon'ble Court while relying on the case reported as PLD 2003 SC 442 held that the right of a person to a petition for habeas corpus could not be syncopated.

(ii) It was observed while keeping in the view the principles enunciated in the august Supreme Court case cited (supra) that preventive detention must conform to the following criteria in order keep it within the bounds fixed by the Constitution and the relevant law inter alia: i.e. (i) the Court must be satisfied that the material before the detaining authority was such that a reasonable person would be satisfied as to the necessity for making the order of preventive detention; (ii) the satisfaction should be established with regard to each of the grounds of detention, and, if one of the grounds is shown to be bad, non-existent or irrelevant, the whole order of detention would be rendered invalid.

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4. **Lahore High Court**
Writ Petition No.30787/2021
Khushnood Bano v. R.P.O. Faisalabad & another
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC1086.pdf

Facts: Petitioner approached the Court through constitution petition to get the information from the respondents police authorities about the exact number of criminal cases registered against her son by pleading that respondent police authorities have involved her son in number of criminal cases due to the grudge of filing of a habeas petition against respondent/RPO Faisalabad, for recovery of her

son and his liberty is compromised due to lack of number of cases registered against him.

Issue: Whether any other efficacious remedy is available to the petitioner to get this information and if yes, then whether petitioner is entitled to any relief by invoking extraordinary constitutional jurisdiction of this Court?

Analysis: The Right to Information Act 2013 has been enacted by the Punjab Government which has its roots in Article 19-A of the Constitution and this law has become one of the most effective means to make an informed citizenry. This fruitful legislation was enacted to curb the unfortunate practice of public bodies, where it was very hard for the general public to get any information from these bodies even of a general nature.

Section 7 makes it mandatory for every public body to designate and notify public information officer(s) in all administrative units or offices, who shall provide information to an applicant. Section 10(8) also prescribe a mechanism that where the public information officer decides not to provide the information, he shall intimate to the applicant the reasons for such decision along with a statement that the applicant may file an internal review under section 12 with the head of the public body or may a file a complaint with the Commission who will deal with the same under section 6 of the information Act 2013.

Section 16 treats it as an offence, if any person obstructs access to information which is the subject of an application, internal review or complaint, with the intention of preventing its disclosure under this Act.

This alternate remedy with respect to nature, extent of relief, point of time of availability of relief and the conditions on which that relief would be available particularly the conditions relating to the expense and inconvenience involved in obtaining it, is most efficacious and adequate remedy because under this legislation information, where life and liberty is involved, is to be provided within 2 working days and that too without any cost, except cost of reproduction and sending of information.

Conclusion: Petitioner has an adequate and efficacious remedy under the Punjab Transparency and Right to Information Act 2013 to obtain requisite information from the respondents by exercising her right to information (RTI).

So, in presence of availability of alternate adequate, petitioner is not entitled to any relief by invoking writ jurisdiction under Article 199 of the Constitution.

5. **Lahore High Court**
Riaz Khalid v. Additional District Judge
Writ Petition No. 30825 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1063.pdf

Facts: Petitioner instituted a suit for declaration with permanent injunction praying that allotment letter and sale deed be declared illegal. Local commission was appointed. Subsequently the petitioner filed an objection petition against the said report. The objections pertained to delay, allegedly reckless conduct of the Local Commission and the non-availability of halqa patwari at the spot. The learned Additional District Judge observed that the trial was yet to commence and any aggrieved party could summon the Local Commission for the purpose of cross examination as provided under Order XXVI, Rule 10 C.P.C.

Issue: Whether in the presence of an acknowledged alternative remedy, a constitutional petition would lie?

Analysis: The court observed that the petition is not maintainable because it does not agitate the acknowledged grounds of judicial review i.e. illegality, irrationality, procedural impropriety or proportionality. Moreover the matter in issue is rooted in factual controversy and for the resolution of which Constitutional jurisdiction is not the appropriate remedy. Constitutional jurisdiction is equitable and discretionary in nature and cannot be invoked to defeat the provisions of a validly enacted statutory provision (in the present matter Order XXVI, Rule 10, C.P.C.)

Conclusion: It was opined that as an adequate alternative remedy is available hence, the present petition is not maintainable. Rule 10 of Order XXVI, C.P.C. provides sufficient safeguards for the rights of the parties so as for them to utilize or challenge any such report of the Local Commission taken as evidence.

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6. **Lahore High Court**
Khalid Imran v Station House Officer
Writ Petition No. 31566-Q of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1078.pdf

Facts: Petitioner sought quashing of FIR for offences under sections 25-D Telegraph Act, 1885 and 354, 506, 337-H(2) and 34 PPC as no offence was made out.

Issue: Whether the controversies that require resolution of disputed questions of fact be adjudicated upon in constitutional jurisdiction under Article 199 of the Constitution?

Analysis: The Court observed that the Constitutional remedy afforded by Article 199 is a sword in the hands of the citizens against executive excesses, Article 199 itself as also the jurisprudence developed on the basis thereof reveals that as against a sword, the jurisdiction contemplated in terms of Article 199 offers many shields as well in the form of conditions and riders. Remedy afforded by the said Article is primarily discretionary in nature and that factual controversies or disputed questions requiring recording of evidence cannot be resolved in constitutional jurisdiction. Court cannot indulge in a fact finding exercise. Needless to mention here that since the criminal reports in question are under investigation, any interference at this stage would mean preempting the powers of the Investigation Officers and the trial courts and such a course of action has never been approved by the Superior Courts.

Conclusion: Held that remedy afforded by the Article 199 of the Constitution is primarily discretionary in nature and that factual controversy or disputed questions requiring recording of evidence cannot be resolved in constitutional jurisdiction. Furthermore held that writ jurisdiction can only be invoked as a last resort when all other remedies have already been exhausted or are not available.

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7. **Lahore High Court**
Muhammad Tayyab Nazir v Province of Punjab
ICA No. 1046 of 2015
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC1169.pdf

Facts: Writ in the nature of Quo Warranto was filed against the respondents on the ground that their reinstatement by the Punjab Text Book Board was illegal, void and without jurisdiction. This judgment was challenged before the Hon'ble Supreme Court of Pakistan by means of C.P.No.2259-L of 2001 which, too, was dismissed. Even after the order passed by the Hon'ble Supreme Court of Pakistan, the then Chief Minister issued directives for reinstatement.

Issue: Whether ICA was maintainable against the original order which emanated from proceedings in which the law applicable had provided a right of appeal?

Analysis: The Hon'ble court aptly observed while discussing the rationale behind the insertion of the proviso to Section 3(2) of the Law Reforms Ordinance 1972 that whether an appeal was availed or not is immaterial and as long as an appeal against the original order is provided by law then an Intra Court Appeal shall not be competent.

Conclusion: In terms of the first proviso to Section 3 of the Law Reforms Ordinance 1972, an Intra Court Appeal shall not be competent if the writ petition before the High

Court under Article 199 of the Constitution arises out of any proceedings in which the law applicable provides for at least one appeal against the original order.

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8. **Supreme Court of Pakistan**
Muhammad Sarfraz Ansari v. The State
Criminal Petition No.435 of 2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._435_2021.pdf

Facts: Petitioner was implicated on the basis of confessional statement of co-accused in case under section 420, 468, 471, 409 and 109 of the Pakistan Penal Code, 1860 read with Section 5(2) of the Prevention of Corruption Act, 1947. His post arrest bail was dismissed by High Court. He filed leave to appeal and requested for grant of bail.

Issue: What is the significance of the confessional statement of co-accused at the bail stage?

Analysis: No doubt, as per Article 43 of the Qanun-e-Shahadat Order 1984 when more persons than one is being jointly tried for the same offence and a confession made by one of such persons admitting that the offence was committed by them jointly, is proved, the court may take into consideration the confessional statement of that co-accused as circumstantial evidence against the other co-accused(s). However, this Court has, in several cases, held that conviction of a co-accused cannot be recorded solely on the basis of confessional statement of one accused unless there is also some other independent evidence corroborating such confessional statement. The principle ingrained in Article 43 of the Qanun-e-Shahadat is applied at the bail stage and the confessional statement of an accused can lead the court to form a tentative view about prima facie involvement of his co-accused in the commission of the alleged offence; but as in the trial, at the bail stage also, the prima facie involvement of the co-accused cannot be determined merely on the basis of confessional statement of other accused without any other independent incriminating material corroborating the confessional statement.

Conclusion: For bail matters**,** the Court can form a tentative view based on the confessional statement of the co-accused pertaining to prima facie involvement of an accused in the alleged offence but like trial at bail stage as well, the uncorroborated confessional statement of a co-accused is not a determining factor for his involvement in the alleged crime.

9. **Lahore High Court**
Mian Muhammad Shahbaz Sharif v. NAB, etc.
Case No. W.P. No.20793/2021
Mr. Justice Ali Baqar Najafi, Mr. Justice Syed Shahbaz Ali Rizvi,
Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2021LHC1006.pdf

Facts: Through this Constitutional petition, petitioner seeks bail after arrest. The prosecution case is simply that petitioner being the public office holder has amassed money and had built up the assets in the name of his close relatives and the dependents as Beanamidars through fraudulent FTTs whereas the petitioner was the main beneficiary.

Issue: Whether the petitioner is entitled to the grant of post arrest bail in a reference on the allegation of assets beyond means for earning assets beyond known source of income to the petitioner through Fictitious Telegraphic Transfer (FTT) in the name of the co-accused family members and Benamidars and others?

Analysis: The allegation is that petitioner had assets worth 269.301 Million in his name but its proof was not enclosed with the reference. No investigation was conducted to dig out the source of income of the petitioner. The NAB has categorically admitted that petitioner is not alleged to have received any kickbacks or any such ill-gotten money in return to a favour extended to someone to build up the assets in the name of his family. It is now law that transaction in the income tax return carries the presumption of truthfulness. In the absence of any property purchased or owned in the personal name of the petitioner and in the absence of direct proof that his family members were his dependents or vice versa and in the absence of direct proof that the money came through FTTs in his account as some crime proceed or money laundering, we cannot accept the prosecution case as a gospel truth. The prosecution has yet to establish its case before the trial court on the basis of 110 witnesses. There is a possibility that the petitioner may be convicted and equal is the chance that he may be acquitted. In the event of acquittal the retribution of the time he spent behind the bar will not be possible.

Conclusion: Resultantly, Post arrest bail is allowed.

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10. **Lahore High Court**
Muhammad Azhar Iqbal v. The State & another
Crl. Misc. No.22547/B/2021
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC1214.pdf

Facts: Petitioner sought post arrest bail in case registered under Section 489-F of Pakistan Penal Code, 1860 whereby it is not clear that whether cheque was issued against a liability or not.

Issue: Whether a cheque issued without satisfying the pre-requisites mentioned in section 489-F PPC constitutes the offence?

Analysis: To constitute an offence punishable under Section 489-F of Pakistan Penal Code, 1860, requirement of law is issuance of cheque with dishonest intention and that too towards repayment of a loan or fulfillment of an obligation. This makes it clear that mere issuance of cheque by one person to other without satisfying the supra mentioned pre-requisites, does not constitute the alleged offence.

Conclusion: Mere issuance of cheque by one person to other without satisfying the pre-requisites of section 489-F PPC does not constitute the offence.

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11. **Lahore High Court**
Maqbool Ahmad v. The State
Crl. Appeal No.969/J/2016
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1189.pdf

Facts: The Petitioner filed Criminal Appeal and while the said appeal was still pending he moved Crl. Misc. for suspension of his sentence which was accepted by the court and he was directed to be released on bail. Subsequently through application under section 561-A Cr.P.C. the Petitioner seeks reduction of the amount of his bond.

Issue: i) The principles of right to a reasonable bail is closely related to the right of fair trial.
ii) Whether surety amount can be reduced at a subsequent stage once the sentence of the convict is suspended but due to excessive amount of bond he is unable benefit from it?

Analysis: In Pakistan, the powers of the police/court to take bond from a person accused of bailable/non-bailable offences is covered by Chapter XXXIX (sections 496-502) of the Code of Criminal Procedure, 1898. Section 498 of our Code is similar to section 440 of the Indian Criminal Procedure Code of 1973. Our jurisprudence is consistent that while stipulating the amount of surety bond the court must always take into consideration the financial position of the accused. The right to a reasonable bail is now considered to be closely related to the right of fair trial

Conclusion: The right to a reasonable bail inter alia means that- (i) the court should fix the amount of the bond having due regard to the circumstances of the case, including the nature of the offence charged, the weight of evidence against him, the financial capacity of the accused and his character/criminal history; (ii) the amount of the bail bond should not be excessive, harsh or unreasonable but should be such as in the judgment of the court would ensure presence of the accused; (iii)

if there are more than one accused in a case, the court may stipulate different amounts for their bail bonds because each one of them stands before the bar of justice as an individual; and (iv) in a case where the Government's only interest is in preventing flight, the court must set the bail at a sum designed to ensure that goal.

The court observed that the principles discussed with reference to pretrial and under trial persons would equally apply to cases where a convict's sentence is suspended and he is released on bail as section 426(1) Cr.P.C. does not make any distinction in respect of the bond. An accused must not be allowed to languish indefinitely in jail but must be given a speedy trial. Involved with this issue are the rights to a reasonable bail and prohibitions against being detained for more than a specified time without bail. The Hon'ble court following the above referred principles allowed the application and reduced the amount of bond.

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12. **Lahore High Court**
Saif-ur-Rehman v. The State and Another
Crl. Misc. No.20613-B/2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC1154.pdf

Facts: The petitioner sought pre-arrest bail in offences punishable under section 302/109/148/149 PPC, having role of hatching abetment of the alleged crime.

Issue: Whether while deciding pre-arrest bail, merits can be touched?

Analysis: The allegations of hatching abetment/conspiracy against petitioner and others at an open place, that was Courts' compound, in presence of their rivals, appears to be unnatural. FIR is silent about time, mode, and manners of conspiracy. Further, when presence of two principal accused was not established on crime scene and they were found in Saudi Arabia and Karachi, the story of abetment/consultations also came under serious doubt as these two were also alleged to be present at the time of said conspiracy. Hence, while deciding the pre-arrest bail Courts are not precluded to examine the merits of the case.

Conclusion: While deciding pre-arrest bail, merits can also be touched.

13. **Lahore High Court**
Mumtaz alias Bhutto v. The State and Another
Criminal Miscellaneous No.30606 of 2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC1144.pdf

Facts: The petitioner sought pre-arrest bail in bailable offences punishable under section 337-F(i) 354 PPC earlier denied by the learned Additional Sessions Judge, Sheikhupura.

Issue: Whether the discretion lies with the court to refuse (pre or post-arrest) bail in bailable offences?

Analysis: A Judge in is under obligation in all circumstances to decide a case in accordance with law. Emotion, sympathy, empathy, and kindness are aliens during the dispensation of justice as it must be realized regardless of consequences. The combined reading of the sections (496, 497 and 498 of Crpc) leaves no uncertainty that while deciding an application, may it be for bail after arrest or pre-arrest, in bailable offence the Court is left with no discretion to refuse the concession to an accused as in such eventuality the grant of bail is a right. Moreover, the order of grant of bail in bailable offences cannot be recalled.

Conclusion: In bailable offence no discretion lies with the Court to refuse the concession of bail may it be pre-arrest or after arrest.

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14. **Lahore High Court**
Rizwan Ahmad & 3 others vs. The State & another
Criminal Revision No.14158 of 2019
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC1133.pdf

Facts: The petitioners were convicted in offences punishable under sections 324/337-A(i)/353/186/148/149 Pakistan Penal Code, PPC by the learned Magistrate. They unsuccessfully challenged the conviction before the learned appellate court and finally assailed both judgments through a criminal revision.

Issue: Can conviction be based on the testimony of sole inimical injured witness and what presumption can be attached to such witness?

Analysis: By now it is a settled principle that conviction can be based upon the sole testimony of injured witness, but certainly subject to fulfillment of criteria on the touchstone of appreciation of evidence. The presumption about presence of injured witness, too, is a settled proposition that his/her presence at place of occurrence cannot be disputed or doubted because of injuries on his body.

In this case conviction was also recorded on the testimony of sole inimical injured witness which needed corroboration as per settled law. However, the witness made material improvements to bring his evidence in line with medical evidence. It is a settled proposition that no reliance can be made on the testimony of a witness who deliberately introduces improvements in his statement so as to cover the lacunas or to bring his testimony in line with other pieces of evidence. Further, the principle of "falsus in uno, falsus in omnibus" was held applicable about the uncorroborated testimony of the sole injured witness.

Conclusion: See above.

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15. **Lahore High Court**
Criminal Appeal No. 87338-J of 2017, Criminal Appeal No. 87339-J of 2017, Murder Reference No.478 of 2017
Alam Khan v. The State etc.
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC1241.pdf

Facts: The two criminal appeals and a murder reference were filed relating to the judgment of learned trial court wherein the petitioners were awarded death penalty and life imprisonment respectively in offences punishable under section 302, 392 and 34 PPC.

Issue: What is the impact of discrepancies in the statements of witnesses, identification parade and recoveries?

Analysis: Among various infirmities noticed by the Court in the prosecution case, the few glaring one were as follows: Firstly, no source of light was given by the prosecution neither in the F.I.R nor during investigation, and nor during testimonies of witnesses. Secondly, the ocular witnesses not only found to be chance witnesses having close relationship with the deceased but also failed to justify their presence at the alleged place of occurrence. Thirdly, a joint identification was conducted against the settled norms of criminal law. Further, the identification report was devoid of any detail about the ages and features of dummies and there was also an un-initialed overwriting at the material part of the report. Fourthly, there was certain blatant improvements in the statements of prosecution witnesses. Fifthly, the recovery of alleged weapon of offence was disbelieved on account of unexplained delay in sending it to the PFSA.

Conclusion: The supra mentioned discrepancies and shortcomings in the prosecution case led to the conclusion that the prosecution had failed to establish the case beyond reasonable doubt, hence, the convictions were set aside accordingly.

16. **Lahore High Court**
Writ Petition No.30742 of 2021
National Bank of Pakistan & another v. The State & others
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC1217.pdf

Facts: The petitioners filed constitution petition to challenge the vires of inquiry conducted by Federal Investigating Agency on the allegations of illegal issuance of loans and money laundering. Primarily it was prayed that F.I.A. authorities be directed to drop the inquiry against the petitioner bank and its employees on the ground of excess committed by the respondent investigating agency.

Issue: Whether F.I.A. authorities falls within the definition of "police authorities" used in section 22-A(6) Cr.P.C. and ex-officio justice of peace can issue directions to F.I.A. authorities?

Analysis: Section 4(2) of the Act of 1974 provides that the administration of the Agency shall vest in the Director General who shall exercise powers of an Inspector General of Police under the Police Act, 1861. While Section 5(1 provides that the members of the Agency shall have such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of Provincial Police have in relation to the investigation of offences under the Cr.P.C. or any other law for the time being in force. Section 5(2), for the purpose of any inquiry, empowers a member of the agency, who is not below the rank of a Sub-Inspector to exercise any of the powers of an officer-in-charge of a Police Station.
The term 'police authorities' used in section 22- A(6) Cr.P.C. is wide enough to include FIA officials and does not only connote provincial police authorities especially when FIA authorities can use all the powers of a police officer of provincial police under the Cr.P.C.

Conclusion: Since status, functions, rights, privileges and liabilities of officials of F.I.A. are same as that of Provincial Police officers under the Cr.P.C. therefore, they would be considered 'police authorities' as per section 22-A Cr.P.C. Consequently, an ex-officio justice of peace was competent to issue directions to the respondents.

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17. **Lahore High Court**
The State v. Rizwan Akhtar *alias* Razi Bawa& another
Murder Reference No.290 of 2015
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC1163.pdf

Facts: The accused, who were implicated in the case on the basis of supplementary statement and were convicted and sentenced to death and rigorous imprisonment by the trial court, challenged the same on the ground that it was based on

unconvincing last seen and circumstantial evidence whereas confirmation of the death sentence was sought on behalf of the State.

Issue: What is the value of res gestae evidence and what are the parameters/requirements to prove circumstantial evidence?

Analysis: Though Article 19 of Qanun-e-Shahadat Order, 1984 supports the admissibility of circumstantial evidence as *Res gestae*, a form of an exception to hearsay; *Res gestae* means 'part of the matter' and has evolved as an umbrella term referring, in general terms, to statements which are so bound up with a particular transaction as to form an important part of that transaction. In other words, the evidence must have such obvious relevance in relation to other evidence that it needs to be admitted in order to 'complete the picture'. This vague concept or type of inadmissible evidence has found its place in the law of evidence in the form of admissible evidence only if it qualifies the following characteristics;
Spontaneous exclamation, which means, person involved, whether a victim or a witness, says something instinctively which is seen as intrinsic to the event in question. Contemporaneous physical condition; which means person victim of assault or in a condition has personally present and informed the witness about tragedy or misdeeds committed by the alleged accused. Present intention; if the victim before the occurrence has posted the intention of accused to the witness about the conduct of the alleged accused. Statement accompanying an act; a statement is also admissible as part of the *res gestae* if it contemporaneously accompanies and explains the act of person making it. The act and statement must be inextricably linked.

Conclusion: The value of circumstantial evidence has to be assessed on consideration that it must be such as not to admit of more than one conclusion, and, in order to find the guilt of a person accused of criminal charge, the facts proved must be incompatible with his innocence and incapable of any explanation upon any other reasonable hypotheses than that of any of his guilt.

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18. **Lahore High Court**
Hamid Hayat v. D.G. Excise and Taxation etc
Writ Petition No.31653/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC1256.pdf

Facts: Through constitutional petition, the petitioner, a civil servant, has assailed the order of competent authority which declined the application of the petitioner for transfer of inquiry/change of inquiry officer.

Issue: Whether the order of the competent authority to allow or disallow the appointment and/or change of an inquiry officer or otherwise transfer of an

inquiry falls within terms and conditions of service attracting the bar contained under article 212 of the Constitution of Pakistan?

Analysis: Any step in disciplinary proceedings formulates the proverbial rung of the ladder of these proceedings and to carve out any step out of those proceedings such as appointment of inquiry officer or change/transfer of inquiry on the pretext that it is an executive/administrative action falling outside the jurisdictional tentacles of Service Tribunal is clearly an unwarranted notional stretch…..Therefore, it is misconception to assert that the appointment and/or change of inquiry officer is a separate and independent administrative and executive action not falling within the scope of disciplinary proceedings and hence out of the purview of the bar contained under Article 212.

Conclusion: The order of the competent authority to allow or disallow the appointment and/or change of an inquiry officer or otherwise transfer of an inquiry falls within terms and conditions of service attracting the bar contained under article 212 of the Constitution of Pakistan.

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19. **Sindh High Court**
Shehnaz Zaidi v. Federation of Pakistan etc.
Constitutional Petition No. D – 3603 of 2016
Mr. Justice Irfan Saadat Khan and Mr. Justice Adnan-ul-Karim Memon
http://43.245.130.98:8056/caselaw/view-file/MTUxNTQxY2Ztcy1kYzgz

Facts: The petitioner, through the constitution petition, sought actualization of her promotion as Librarian (BPS-16) in the Directorate of Training & Research (Customs Excise & Sales Tax), Karachi with effect from the date of recommendation of the Departmental Promotion Committee (DPC) vide minutes of the meeting after her superannuation.

Issue: Whether the petitioner superannuating after the recommendations of the Departmental Promotion Committee, for promotion in higher rank, was entitled to profarma promotion?

Analysis: Essentially in service jurisprudence, appointment, promotion is of utmost importance. If these are made on merit under definite rules, instructions, etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil/government servant, therefore, the petitioner could not be precluded to ask for the actualization of her promotion as Assistant Librarian / Librarian as per the recommendation of the DPC held on 12.02.1985. The record does not reflect that the aforesaid minutes of the meeting were cancelled by the respondent department at any moment and in absence of this the aforesaid minutes were/are required to be actualized**.**
A civil servant is entitled to proforma promotion, once during his/her service, approved by the Competent Authority and in the meanwhile, if he/she

superannuates, he/she is entitled to all benefits as admissible under the law. We are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of *Iftikharullah Malih v. Chief Secretary and others (1998 SCMR 736)* and *Askari Hasnain v. Secretary Establishment and others (2016 SCMR 871).*

The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his/her legitimate turn due to any reason but not a fault of his/her own then in such a situation, the monetary loss and loss of rank is remedied through proforma promotion. Even otherwise petitioner had met the criteria being eligible to be considered by the appointing authority in respect of the benefits of proforma promotion as discussed supra.

Conclusion: The petitioner was entitled to proforma promotion after her superannuation as per recommendation of DPC.

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20. **Lahore High Court**
M/s Obaid Associates and another v. United Bank Limited.
Regular First Appeal No.1673 of 2014
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC1074.pdf

Facts: The respondent/plaintiff-Bank filed a suit for recovery against the appellants/defendants. In the suit, unconditional leave was granted in respect of Letter of Credit facility and amount of markup in the suit, however, interim decree was passed regarding principal amount under the Cash Finance facility. The appellants/defendants being aggrieved have filed this appeal.

Issue: Whether filing of additional documents regarding cash finance facility by the respondent-Bank itself create a ground to grant leave to defend?

Analysis: The filing of additional documents and Statement of Account by respondent-Bank itself constitutes a ground for grant of leave to defend the suit. Since, the appellants/defendants had no opportunity to rebut, controvert or comment on these additional documents in the petition for leave to defend, therefore, these additional documents are to be proved in evidence, which entitle the appellants/defendants to grant of leave to defend the suit.

Conclusion: See Above.

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21. **Lahore High Court**
Misbah ud Din Zaigham & others v. Federal Investigation Agency & others
W.P No.68772 of 2019
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC941.pdf

Facts: The petitioners challenged show-cause notice issued by the FIA u/s 20(7) of the FIO, 2001 pursuant to a complaint filed by the authorized officers of the financial

institutions in each case despite of the fact that appeal of the petitioners were pending before the Division Bench of High Court against the judgment and decree of Banking Court regarding determination of their civil liability, which is held to be a mandatory requirement for determining the factum of 'willful default' by full bench of High Court in Mian Ayaz Anwar's case (2019 CLD 375).

Issue: In order to ascertain the offence of willful default under FIO, 2001, whether determination of the civil liability would include a determination to be made by the appellate court as well or not?

Analysis: The words "become due" used in the definition of willful default under Section 2(g)(i) have been interpreted in *Mian Ayaz Anwar* to mean that there has to be determination made of the sum due, which is primarily a civil liability by a court which has been established under the law for doing so. There is no doubt that in laying down the rule regarding pre-determination of civil liability of default in *Mian Ayaz Anwar* the learned Judges clearly meant that not only the determination must be made by court of first instance but doubtless by one appellate court as well.

The view that the appellate procedure must conceivably be part of the determination of civil liability is based on two principles entrenched in our jurisprudence. The first is drawn from an established line of respectable authority that an appeal is a continuation of the original suit and opens up the case for rehearing on error and facts, both. And the second is the critical importance of constitutional criminal law which protects and preserves the right of a person to due process of law in all criminal prosecutions. In essence, a right to one appeal is a constitutional right. If one right of appeal is a fundamental and basic right, it follows ineluctably that a person"s civil liability would necessarily hinge upon a determination not only to be made by the court of original jurisdiction but also by at least one appellate court. If the financial institution were permitted to initiate criminal proceedings and to proceed to file a criminal complaint in terms of section 20(7) of the Ordinance, 2001 and even before the appeal is finally decided, that complaint may have been concluded and punishments inflicted on the persons accused of that offence.

Of the fundamental rights guaranteed by Articles 9 to 28, almost 16 belong to criminal procedure and may as well (like the American Bill of Rights) be described as a mini-code of criminal procedure. Access to justice is part of the right to life under Article 9. Read in conjunction with the constitutional right to one appeal, access to justice would mean an interwoven set of rights which includes a proper trial as well as an appellate procedure. And no man should be subjected to any detriments, especially in criminal law, unless willful default has been established by the court of appeal.

The probable cause in the present context of the offence of willful default has a linkage to the determination of civil liability by the Banking Court (and one appellate court, by extension). The filing of a complaint would give rise to an

imminent threat of seizure of person and his arrest and this cannot be countenanced unless probable cause exists which has a reference to prior determination of civil liability.

Conclusion: The offence of willful default under Section 2(g)(i) can only arise once not only the proceedings before the court of original jurisdiction but also before the appellate court in any appeal filed under FIO by the petitioners have concluded.

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22. **Supreme Court of the United States**
Comcast Corp. v. National Association of African American-Owned Media
589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-1171_4425.pdf,
https://ballotpedia.org/

Facts: The case related to protections against racial discrimination in the Civil Rights Act of 1866. The case relates to whether cable television operator Comcast engaged in racial discrimination in refusing to carry channels from Entertainment Studios.

Issue: Does a claim of race discrimination under 42 U.S.C. § 1981 fail in the absence of but-for causation?

Analysis: In torts law, a plaintiff must prove that his or her injury would not have occurred but for the defendant's illegal conduct. In his opinion, Justice Gorsuch wrote that 42 U. S. C. §1981 does not provide an exception to the but-for legal principle. In his opinion, Justice Gorsuch wrote, "*Taken collectively, clues from the statute's text, its history, and our precedent persuade us that §1981 follows the general rule. Here, a plaintiff bears the burden of showing that race was a but-for cause of its injury. And, while the materials the plaintiff can rely on to show causation may change as a lawsuit progresses from filing to judgment, the burden itself remains constant*". Justice Ginsburg filed a concurring opinion.

Conclusion: In a 9-0 opinion, the court vacated and remanded the 9th Circuit's decision in a unanimous ruling, holding that 42 U.S.C. § 1981 does not provide an exception to the but-for legal principle, in which a plaintiff must prove that his or her injury would not have occurred but for the defendant's illegal conduct. In other words, African American-owned television network operator Entertainment Studios must plead and prove that Comcast Corporation would have acted differently if Entertainment Studios were not owned by African-Americans. However, the parties reached a settlement after the Court's decision.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4

   Spectrum of 'Inherent Powers of High Court' under Cr.P.C. by Gargi Singh & Abhinav Singh

   Article 227 of our Indian Constitution provides that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The criminal procedure code further provides that every High Court shall so exercise superintendence over subordinate courts so as to ensure proper disposal of cases buy such courts. The 'Code' has entrusted every High Court with several powers and duties for providing fair justice in the society.
   The Allahabad High Court, in one of its Judgment's while dealing with the section 482, has observed that 'The section is a sort of reminder to the High Courts that they are not merely courts in law, but also courts of justice and possess inherent powers to remove injustice.

2. **STANFORD LAW REVIEW**
   https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/04/Elengold-Glater-73-Stan.-L.-Rev.-969.pdf

   The Sovereign Shield by Kate Sablosky Elengold & Jonathan D. Glater

   This Article untangles the doctrines that extend the sovereign shield to private actors and exposes the alliance that such extension enables between the executive branch and businesses. We explain how this alliance shifts the balance of power in three ways: in favor of the federal government at the expense of the states, in favor of the executive branch at the expense of the legislature, and in favor of private enterprise at the expense of consumers

3. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12602

   The 'Chimera' of Parenthood by Brian Sloan

   In apparently the first reported instance of a paternity test being 'fooled' by a 'human chimera', a man 'failed' a paternity test because the genetic material in his saliva was shown to be different from that in his sperm. Such a chimera has extra genes, here absorbed from a twin lost in early pregnancy. The result was that the 'true' genetic father of the man's son was the twin, who had never been born. Chimeras present a challenge to legal systems, given the frequent emphasis on genetics in determining parenthood.

4. **COURTING THE LAW**
https://courtingthelaw.com/2021/05/25/commentary/who-is-authorized-to-exercise-legal-control-over-sugar-price-fixation-in-pakistan/

Who is Authorized to Exercise Legal Control Over Sugar Price Fixation in Pakistan? by Ramsha Shahid

"[P]resently there is a loose check on the profiteers and hoarders and the same is only possible by adopting a mechanism by the respective Provincial Governments by taking stringent steps otherwise it would be beyond the capacity of an ordinary laborer to provide bread to his family including children and old persons".

5. **PAKISTAN LAW DIGEST**
http://www.plsbeta.com/LawOnline/law/contents.asp?CaseId=2020J15

International Investment Arbitration & The Role of National Courts by Usama Malik

This research essay elaborates upon the nature, purpose and structure of international arbitration, along with exploring the relationship between national courts (particularly national courts at the seat of arbitration) and arbitral tribunals. The essay will delve into a critical analysis of the extent of justifiable involvement of national courts in arbitral proceedings and what can be considered to be unjust interference of national courts at the seat of arbitration. This analysis will take into account certain legal limitations that have been placed on national courts to curb their intervention in arbitration. Furthermore, the research essay will also deliberate upon the supportive role of the national courts in bolstering the practice of international arbitration. Lastly, the author will elaborate upon mechanisms that can counter the authoritarian attitude of national courts seeking to infringe the powers of the arbitration tribunal.