LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-08-2021 to 31-08-2021)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Lahore High Court**
Faysal Bank Limited v. Sajjad Aslam etc.
EFA No. 242230 of 2018
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC4001.pdf

Facts: The petitioner assailed the order of Banking Court passed during execution proceedings whereby the proceedings of auction carried out by court auctioneer were set aside on the ground of irregularity committed by the court auctioneer as he pasted the proclamation outside the court premises three days prior to the date of such order by the court.

Issue: Whether an irregularity of pasting proclamation outside the court premises few days prior to such order is sufficient to set aside the whole auction proceedings?

Analysis: Order XXI Rule 90 CPC proceeds on different basis. In order to succeed it was mandatory for the judgment-debtor to satisfy the court, on the merits, that the sale should be set aside on the ground of a material irregularity, or fraud, in publishing or conducting it. Another condition was prescribed by means of the proviso thereto which stipulated that no sale shall be set aside on the ground of irregularity or fraud unless, upon the facts proved before the Court, it was established that the judgment-debtor had sustained substantial injury by reason of such irregularity or fraud. A mere allegation was not sufficient. It has to be established that no merely an irregularity but a material irregularity had taken place, or, in the alternative that fraud had been perpetrated in the process of carrying out the sale. Even if these conditions were complied with the judgment debtor must satisfy the court that he had sustained a substantial injury by reason thereof. It has further held that mere an irregularity, even if material, should not suffice unless it could be shown that material loss had been caused.
Where the judgment-debtor felt that he was being harmed by some ministerial order with respect to sale of his immoveable property, which was not in accordance with law, it was his clear duty to assert the same before the court rather raising it at the stage of appeal, or further appeal, or in review, or not at all and expect the court to do it for him and that the judgment-debtor could not be allowed to do nothing and then after the passage of many years in which third party interests had been created to rely on a technical objection to delay the court of justice.

Conclusion: The nature of irregularity committed by the Court Auctioneer is not such which has caused substantial injury to the judgment-debtor, so the auction proceedings cannot be set aside on account of mere irregularity which is not substantial in nature.

2. **Lahore High Court**
Syed Tahwer Hussain Rizvi v. Syed Javed Ali Rizvi
Civil Revision No.707/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC4054.pdf

Facts: The respondent filed a suit for declaration against the petitioner by alleging the petitioner ostensible owner of suit property. The petitioner raised preliminary objection that civil courts have no jurisdiction in terms of Section 43 of the Benami Transaction (Prohibition) Act, 2017, at which the plaint of the respondent was rejected under Order VII, Rule 11 CPC. On appeal the finding of trial court was reversed and matter was remanded to trial court for further proceedings in accordance with law.

Issues: Whether jurisdiction of civil court is barred in terms of Section 43 of Benami Act?

Analysis: Section 43 of Benami Act stipulates bar as to the jurisdiction of the civil courts in relation to any proceeding in respect of any matter which any of the authorities, or the Tribunal is empowered by or under this Act to determine. For applicability of Benami Act on a transaction, the property forming subject thereof must be held by a benamidar in terms of clause (a) and (b) of Section 2(8)(A) of the Act and not under the exclusion envisaged thereunder. Similarly, there must be some proceedings, triggered and initiated under Banami Act and/or matters, which any of the Authority or the Tribunal established thereunder are empowered to determine, in respect whereof the jurisdiction of civil courts is barred and not every matter where the issue of benami comes into play can be said to be barred. Civil courts in terms of Section 9 of CPC are courts of ultimate and plenary jurisdiction and any suit of civil nature is to be tried by the civil courts unless jurisdiction is expressly or impliedly barred. Similarly, to address the issue of maintainability of a suit before civil courts in terms of Section 43, it is from the pleadings of the parties and the issues framed therein, on case to case basis, which are to be the determining factors as to whether the matter agitated in a particular case falls within the ouster clause i.e., Section 43 or the exceptions thereof i.e., sub-clause (i) and (ii) of Section 2(8)(A)(b).

Conclusion: Jurisdiction of civil courts is not exclusive barred in terms of Section 43 of Benami Act. It is from the pleadings of the parties and the issues framed therein, on case to case basis, which will be the determining factors as to whether the matter agitated in a particular case falls within the ouster clause i.e., Section 43 or the exceptions thereof i.e., sub-clause (i) and (ii) of Section 2(8)(A)(b).

3. **Lahore High Court**
Dr. Sarfraz DDO Health, etc. v. Malik Muhammad Jamil, etc.
R.F.A No.33446 of 2019
Mr. Justice Ch. Muhammad Masood Jahangir,
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC3971.pdf

Fact: The appellants challenged the judgment and decree, whereby suit filed by respondent No.1 for recovery of Rs.6,90,00,000/- as damages was decreed to the extent of Rs. 2,40,00,000/-.

Issue: i) Whether a suit for damages is maintainable against Civil Servants for act done in good faith in their official capacity?
ii) Is it necessary to decide issues of law prior to deciding issues of fact?
iii) What is the spirit of Order XX Rule 5 CPC?

Analysis: i) Section 8 of the West Pakistan Essential Services (Maintenance Act) 1958 clearly provides that no suit, prosecution or other legal proceedings shall lie against any person who acts in good faith or intends to do under this Act…Under the law presumption of good faith is attached to official acts committed during discharge of official duties unless proved to the contrary. A civil suit is not maintainable against Civil Servants/ Government officials for acts done in good faith, while discharging official duty.
ii) It is settled principle that where jurisdictional point or maintainability of the suit is in question, the requirement is first to resolve these legal points so as to avoid further exercise of lengthy trial which certainly would consume the time and energy of the Court, as well as of the litigants.
iii) The spirit of Order XX Rule 5 CPC is that the judgment of the learned trial court should contain the findings on all issues separately.

Conclusion: i) A civil suit is not maintainable against Civil Servants/ Government officials for acts done in good faith in official capacity.
ii) It is necessary to decide issue of law prior to the decision of issues of fact.
iii) The spirit of Order XX Rule 5 CPC is that the judgment of the learned trial court should contain the findings on all issues separately.

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4. **Supreme Court of Pakistan**
Universal Insurance Company etc v. Karim Gul & another
Civil Appeal No.1280 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1280_2019.pdf

Facts: An insured motor vehicle was considerably damaged in an incident and it became (to use an insurance term in its technical sense) a "total loss" (according to the appellant). The claim of the insured having been settled what remained, i.e., (to again use a technical term) the "salvage" was sold off by the appellant to the

respondent No. 1. Respondent No. 1 expended a substantial sum to repair the car and bring it into usable condition. Its registration was refused by the authority stating that there was already another vehicle registered with the same number. He filed a suit for damages against insurance company (the appellant). Contention of the appellant company was that they sold a "wreckage" and not the car. Contention of respondent No. 1 was that he purchased a motor vehicle in a damaged condition.

Issue: Whether the "goods" as claimed by the contesting respondent, a motor vehicle in howsoever badly damaged a condition it may have been or was it, as contended by the appellant, nothing but and only a wreck which was not a motor vehicle in any meaningful sense, and absolutely no regard had to be given to what the contesting respondent intended to, or could, or actually did, do with it? The question is in what sense were the words "total loss" used in the contract: as "actual" or "constructive" total loss?

Analysis: The key words to be examined are "total loss". The question is how this term is to be interpreted and applied. Are the words to be understood in the technical sense that they bear in insurance business, or given an ordinary meaning, in the context of that what was being sold? There is nothing to suggest that the contesting respondent was involved in the insurance business or had any familiarity or knowledge of how these words are used there. Learned counsel for the appellant argued that the words were to be understood in an ordinary sense, i.e., that the loss undergone was total. If applied in this sense it would be plausible to conclude that what was sold was mere wreckage, i.e., something that had ceased to be a car in any meaningful sense. This could be regarded as a non-technical use of the words. However, if the words are to be understood in a technical sense a different conclusion could emerge. The reason is that in the insurance business the thing insured can be declared to be a "total loss" in two different senses. One is of it being an "actual total loss". Here, the sense is that the insured property has been destroyed or damaged to such an extent that it can be neither recovered nor repaired for further use; it has been (to use a somewhat everyday expression) "totaled". In this sense the insured property is reduced to just wreckage and nothing more. The other is "constructive total loss". This is the situation where the repair cost of the damaged insured property exceeds its market value if the repairs were undertaken…. It will be seen that in an "actual total loss" situation, the thing insured (here, the car) is so damaged that it ceases to be a thing of the kind insured. In other words, the car would cease to be as such, and become mere wreckage. However, in "constructive total loss" the insured property does retain its description as such; it is simply that it is not worthwhile to pay for the repairs or have them undertaken. In this sense, the car would be regarded as continuing to remain as such no matter how much damage it may have suffered… A well-known principle of interpretation of contracts is the contra proferentem rule: "when there is a doubt about the meaning of a contract, the words will be

construed against the person who put them forward"… This rule applies here, and the ambiguity must be resolved against the appellant. The words "total loss" used in the contract ought not to be construed in the sense of "actual total loss", which would reduce that what was sold to mere wreckage. They should be taken to have the other technical meaning, i.e., "constructive total loss". In other words, the car in question retained its character as such, and did not cease to be a thing of the kind that had been insured.

Conclusion: As per contra proferentem rule, the ambiguity must be resolved against the appellant who drafted the contract. The words "total loss" used in the contract ought not to be construed in the sense of "actual total loss", which would reduce that what was sold to mere wreckage. They should be taken to have the other technical meaning, i.e., "constructive total loss". In other words, the car in question retained its character as such, and did not cease to be a thing of the kind that had been insured.

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5. Lahore High Court
Bashir Ahmad v. Iqbal Ahmad
Civil Revision No. 1250-D-2011
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC4185.pdf

Facts: The respondent/plaintiff instituted a suit for possession on the basis of pre-emption which was decreed by learned appellate court. The petitioner/ defendant challenged the said decree through this revision petition.

Issue: Whether it is necessary to produce the postman as a witness to establish the delivery of notice of Talb-i-Ishhad?

Analysis: The august Supreme Court of Pakistan dispensed with the production of postman and declared that it is not violative of the law, if the registration clerk of the concerned G.P.O., who issued the receipt along with the relevant record, appeared before the Court and brought on record the receipt and acknowledgment due.

Conclusion: The production of postman can be dispensed with, if the registration clerk of the concerned G.P.O., who issued the receipt along with the relevant record, appeared before the Court and brought on record the receipt and acknowledgment due.

6. **Lahore High Court**
Dr. Muhammad Jawad Jan Arif v. Dr. Ayesha Chaudhary, etc.
W.P. No.12248 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3957.pdf

Fact: The petitioner has challenged order of a learned Judge Family Court whereby interim maintenance allowance in respect of the petitioner's 5½ years old autistic daughter has been raised from Rs.20, 000/- to Rs.50, 000/- per month.

Issue: i) Does the Family Court have un-fettered and un-bridled powers to fix interim maintenance at its discretion?
ii) Can constitutional jurisdiction, through writ petition be invoked against an interim order, where remedy of appeal is not available?

Analysis: i) The Family Court does not have un-fettered and un-bridled powers to fix interim maintenance at its discretion. The Court will broadly look into the social status of the parties, the earning of the defendant, his capacity to pay; requirements of the minor and on this touchstone fix interim maintenance.
ii) It is well settled principle that orders at the interlocutory stages should not be brought to the higher Courts to obtain fragmentary decision, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law, even reducing the right of appeal. The principle of judicial review embodied in the remedy afforded by Article 199 of the Constitution certainly cannot be used to negate, erase or offend the manifest intent of the law-maker. When the Legislature has specifically prohibited the filing of an appeal against an interim order, to entertain a writ petition would tantamount to defeating and diverting the intent of the Legislature. However, if the order is absolutely irrational, overtly perverse, grossly disproportionate, without jurisdiction or even in excess thereof, or coram non judice, the statutory ouster/bar may be crossed.

Conclusion: i) The Family Court does not have un-fettered and un-bridled powers to fix interim maintenance at its discretion.
ii) Where an appeal is prohibited by law against an interim order, constitutional jurisdiction through writ petition cannot be invoked, unless the order is absolutely irrational, disproportionate or without jurisdiction.

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7. **Supreme Court of Pakistan**
Muhammad Imran v. The State, etc
Crl.P.860-L/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._860_l_2021.pdf

Facts: Petitioner had issued three cheques in favour of the business of the complainant in the sum of Rs 2 million each, which were subsequently dishonoured. Eight other criminal cases were registered against the petitioner by different parties under the

same offence, involving sizable amounts. Three cases were registered after instant F.I.R. Petitioner remained a proclaimed offender.

Issue: Whether petitioner is entitled to grant of bail when offence does not fall within prohibitory clause of Section 497(1) CrPC?

Analysis: The offence under Section 489-F, PPC does not fall within the prohibitory clause of Section 497(1) CrPC and bail in such a matter is a rule and refusal an exception. The grounds for the case to fall within the exceptions meriting denial of bail include (a) the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged…Registration of cases prima facie, establish that the petitioner is prone to repeating the offence. Petitioner having been declared an absconder in this case for over one and a half year generates the apprehension that the petitioner may avoid standing trial and hence delay the prosecution of the case. The material on record makes the case of the petitioner fall under two exceptions to the rule of grant of bail.

Conclusion: Petitioner is not entitled to grant of bail even when offence does not fall within prohibitory clause of Section 497(1) CrPC since his case falls within two exceptions.

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8. **Supreme Court of Pakistan**
Inam Ullah v. The State, etc
Crl.P.39-L/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._39_l_2021.pdf

Facts: The petitioner filed a pre-arrest bail petition before the High Court which was withdrawn without arguments on merits. Thereafter, the petitioner filed a second pre-arrest bail petition. The High Court dismissed the second pre-arrest bail petition with the observation that the petitioner was trying to play hide and seek with the court in order to deliberately prolong the matter and create hurdles in the way of the investigation.

Issue: Whether the second pre-arrest bail petition after withdrawal of the first pre-arrest bail petition without satisfactory explanation for withdrawal is maintainable?

Analysis: Filing a pre-arrest bail petition, enjoying the concession of ad interim bail granted therein and then simply withdrawing the petition in order to file another one after sometime and availing the same benefit of ad interim bail once again, in the absence of any lawful explanation or justification, is a sheer abuse of the process of the court…. While the accused can approach the same court with a fresh pre-

arrest bail petition if the earlier one has been withdrawn without advancing arguments on merits, the court must be watchful that the successive petition is not readily entertained or the concession of ad interim bail granted to the accused, unless he furnishes satisfactory explanation for withdrawal of the first petition and filing of the second one…The accused must be required by the court to furnish satisfactory explanation for withdrawing the first pre-arrest bail petition at the time of entertaining the second pre-arrest bail petition. Unless there is satisfactory explanation, the second bail petition should not be entertained, because otherwise the accused would have an unchecked license to abuse the concession of ad interim pre-arrest bail by misusing the court-process, and hoodwink the Police to prolong the investigation. Therefore, while the accused has access to courts to seek pre-arrest bail, even successively for justifiable reasons, he cannot be permitted to abuse the concession of ad interim bail to stall the investigation and play hide and seek with the criminal justice system. In case the accused fails to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable.

Conclusion: In case the accused fails to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable.

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9. **Supreme Court of Pakistan**
Azam Saleem etc v. The State, etc
Crl.P.797-L/2021 and Crl. P.799-L/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._797_l_2021.pdf

Facts: The first pre-arrest bail petitions of petitioners were dismissed by the High Court for non-prosecution. The second pre-arrest bail petitions have been dismissed on merit.

Issue: Whether the second pre-arrest bail petition after dismissal of earlier one for non-prosecution was maintainable?

Analysis: If a pre-arrest bail petition is dismissed for non-appearance of the petitioner under Section 498-A CrPC, the second pre-arrest bail petition is maintainable only if the petitioner furnishes satisfactory explanation for his absence in the first petition. Only if the explanation is found satisfactory the Court can proceed further and decide the second petition on merits. However, if the explanation is found to be unsatisfactory, the second petition is not maintainable and is liable to be dismissed without going into the merits of the case.

Conclusion: The second pre-arrest bail petition is maintainable only if the petitioner furnishes satisfactory explanation for his absence in the first petition. If the explanation is

found to be unsatisfactory, the second petition is not maintainable and is liable to be dismissed without going into the merits of the case.

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10. **Lahore High Court**
Bashir Ahmad v. District Police Officer etc.
Crl. Misc. No.3831/H/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4175.pdf

Facts: Petitioner sought recovery of his son from the alleged illegal custody of Respondent No.3 (SHO).

Issue: What are the essential safeguards against police excesses after arrest of a person?

Analysis: Section 62 Cr.P.C. requires the officer in-charge of the police station to report the cases of all persons apprehended without a warrant to the District Superintendent of Police etc. irrespective of the fact whether they have been admitted to bail or not. Rule 12(ii) of Chapter 11-B Volume III of the Lahore High Court Rules and Orders enjoins that an accused person should not be removed to a place which is either inaccessible or unknown to his friends or counsel. Further information regarding his place of confinement should at all times be given to his friends on their application. And lastly, the prisoner should be informed that he is entitled to have the assistance of his counsel and to communicate with his relatives and friends. These provisions are formidable safeguards against police excesses.

Conclusion: See above.

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11. **Lahore High Court**
Muhammad Umar v. The State & 2 others
Criminal Appeal No. 88-J of 2015
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC4023.pdf

Facts: Appellant, along with two others, was trialed in case under Sections 302/34 PPC and was convicted under Section 302-B PPC. However other two were acquitted on the basis of compromise with legal heirs of deceased. Being dissatisfied from his conviction, appellant has assailed the impugned judgment.

Issues: i) Whether a promptly lodged FIR can rule out the possibility of false involvement of accused person?
ii) What are the golden principles of law regarding reasonable doubt?

Analysis: i) Promptitude in FIR is not enough to rule out the possibility of false involvement of accused, if on the basis of judicial scrutiny of the evidence on record it is found that prosecution has failed to prove its case beyond reasonable doubt. It is not a guarantee that in timely recorded FIR, false involvement of an innocent person is not possible.

ii) These are the golden principles of law regarding reasonable doubt: -

a. Finding of guilt against an accused cannot be based merely on the high probabilities that may be inferred from evidence in a given case.
b. Finding of the guilt should rest surely and firmly on the evidence produced by the prosecution.
c. Mere conjectures and probabilities cannot take the place of proof otherwise the golden rule of benefit of doubt will be reduced to naught.
d. It is the duty of prosecution to prove its case beyond reasonable doubt.
e. Accused is only to create dents in prosecution's case.
f. Benefit of doubt however slight must go to accused not as a matter of concession or grace but as a matter of right.
g. Even a single infirmity in prosecution's case would entitle accused to benefit of doubt.

Conclusion: i) A promptly lodged FIR cannot rule out the possibility of false involvement of accused person.
ii) See above.

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12. **Lahore High Court**
Waris v. The State, etc.
Crl. Misc. No.46188-B of 2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC4042.pdf

Facts: Through this petition, the petitioner sought post-arrest bail in a case under Sections 392, 395, 412, 411 PPC.

Issue: i) Whether nomination of accused through supplementary statement without disclosure of source is a matter of further inquiry
ii) What is the effect of nomination of accused prior to identification parade at bail stage?

Analysis: i) In a case where accused is not nominated in FIR rather nominated through supplementary statement without disclosure of source of information, it becomes matter of further inquiry.
ii) Nomination of accused prior to identification parade diminishes sanctity of such Test Identification Parade and its evidentiary value shall be determined by the trial court.

Conclusion: i) Nomination of accused through supplementary statement without disclosure of source is a matter of further inquiry.

ii) Nomination of accused prior to identification parade diminishes sanctity of such Test Identification Parade.

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13. **Supreme Court of Pakistan**
Inhaf Ullah v. The State, etc
Criminal Petition No.60 of 2017
Mr. Justice Mushir Alam, Mr. Justice Yahya Afridi,
Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._60_2017.pdf

Facts: Petitioner was convicted under section 365-A of the Pakistan Penal Code, 1860 and sentenced to imprisonment for life. He was identified by the witness as recipient of the ransom in response to a court question.

Issue: How Court should exercise power to put question to a witness?

Analysis: Petitioner's identification, with handcuffs in the dock, through intervention of the Presiding Judge fails to commend our approval. The Court bears no responsibility either for the prosecution or the defence; it must maintain its neutrality to decide a case on the strength of evidence alone, essentially to be adduced by the prosecution itself to drive home the charge. No doubt, the trial Court is vested with ample authority to put questions to the witness, however, the power of this amplitude must be exercised with caution and circumspection, solely in aid of justice without disturbing equality in the scales; in the present case, incessant interventions by the trial Judge has grievously undermined testimony of a witness, otherwise mute and reticent on a fundamental detail of the case.

Conclusion: This power must be exercised with caution and circumspection, solely in aid of justice without disturbing equality in the scales.

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14. **Lahore High Court**
Rashed alias Chand, etc. v. The State
Crl. Appeal No. 582-J of 2016
Mr. Justice Ch. Abdul Aziz and Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC4076.pdf

Facts: The appellants/accused were convicted and sentenced to death & life imprisonment etc. by Anti-Terrorism Court under Sections 302 & 34 of the Pakistan Penal Code, 1860 alongside Section 7 of the Anti-Terrorism Act 1997. The appellants filed appeal against their sentences and the learned trial court sent Murder Reference U/S 374 Cr.P.C, 1898 for the confirmation or otherwise of the death sentences.

Issues: i) Whether relationship of eyewitnesses with the deceased makes them interested witnesses?

ii) What are the salient points of instructions for conducting Identification Parade (ID)?

iii) Whether evidence of a Wajtakkar witness comes within the ambit of *res gestae* and is admissible in evidence?

iv) What is the precondition to make a judicial confession basis for awarding conviction and whether the confession retracted at a belated stage can have any impact in awarding conviction?

v) What is a standard of admissibility of CCTV footage and CDR of cell phones?

vi) What is the evidentiary value of a forensic report where delay has been caused in submitting the samples to Forensic Laboratory for conducting forensic analysis?

Analysis: i) It is a settled law that testimony of closely related witnesses cannot be discarded merely on the ground of their relationship with the deceased. As mere relationship of a witness with the deceased does not undermine the value of his testimony, if otherwise it is found with a ring of truth.

ii) Following are the salient points of instructions laid down in Rules and Orders of Lahore High Court for conducting identification parade:

a. List of all persons/dummies included in the parade should be prepared containing parentage, address and occupation of each member of the parade.

b. When any witness identifies a member of the parade, the Magistrate should note in what connection he is identified.

c. If a witness identifies a person wrongly, it should be recorded so instead of mentioning that the witness identified nobody.

d. Magistrate should record complaint/objection of suspect, if any.

e. The Magistrate should state precautions taken to prevent the witnesses from seeing the suspect before commencement of ID parade.

f. Magistrate should ensure that no communication to facilitate identification of suspect is made to any witness, awaiting his turn to identify.

g. Magistrate should also note that whether dummies are inmates of jail or not.

h. It is fair both to the prosecution and the accused that the members of the parade should be presented in a normal state and, if possible, the dress of the parade should have resemblance to the accused as he appeared to the witness at the time of the commission of the offence.

i. At the end, the Magistrate should append a certificate regarding his proceedings.

iii) The evidence of a wajtakkar witness is relevant under the doctrine of *res gestae* as the witness came across the appellants while they were fleeing from the vicinity of crime while brandishing their weapons. Besides, the eyewitness told

the Wajtakkar witness that deceased had been shot. So, instance of seeing the accused fleeing from the place of occurrence by the Wajtakkar witness and utterance of another eyewitness is sufficiently spontaneous so as to form evidence of res gestae, thus is admissible.

iv) In order to make a judicial confession basis for awarding conviction, the prosecution is required to prove that such confession was made voluntarily and it contains true account of the occurrence. Moreover, it is a settled law by now that a confessional statement, if true, voluntary, and containing full details of the events of an occurrence, even if retracted afterwards, can be made basis of conviction even in case of capital punishment.

v) So far as the CCTV Footage is concerned, admittedly, it was not containing the clear visuals of the incident and the facial features of the culprits were also blurred. On this score alone, the evidence of CCTV footage is destined to be discarded. As regards Call Data Record, no person or record keeper of the cellular company appeared in the dock to provide legal sanctity to such evidence. Thus, these pieces of evidence are inadmissible in evidence.

vi) It is a cardinal principle of law that whenever a sample for forensic test is obtained or taken into possession, the same should be sent to Forensic Laboratory without any unnecessary and un-explained delay, to rule out possibility of any fabrication or tampering. Nevertheless, when delay is caused in sending the forensic material, the evidence may not be free from doubt, especially when no plausible explanation has been provided by the prosecution as to why these samples were not sent to PFSA with other items and why police authorities did wait for the arrest of the appellants and sent these samples only after taking subsequent samples from the appellants. So, this piece of evidence cannot be relied upon.

Conclusion: i) See above.

ii) See above.

iii) The evidence of a Wajtakkar witness comes within the ambit of the doctrine of res gestae and is admissible in evidence.

iv) See above.

v) See above.

vi) See above.

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15. **Lahore High Court**
Qamar Altaf v. The Commissioner Multan etc.
W.P.No. 1523 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC4102.pdf

Facts: The petitioner sought direction to deliver vacant possession of the official residential quarter allotted to him but not vacated by one of the respondents despite of the fact that he was compulsory retired from service on the ground of corruption.

Issue: i) Whether a government employee who is compulsory retired from service, can retain the officially allotted quarter on the ground of pendency of appeal before Service Tribunal?

ii) Whether concealment of facts regarding filing and pendency of earlier appeal before High Court disentitles a party for grant of relief?

Analysis: i) There is no legal obligation of the government to provide residential accommodation to its employees nor a government servant has any vested legal right or claim to the allotment of the government owned residential accommodation. However, allotment of the government accommodation is a discretion, the exercise whereof is guided and structured by the Allotment Policy. There is no entitlement to government accommodation save in accordance with allotment policy of the concerned government and there is no provision in the Allotment Policy for allowing retention of the government accommodation till decision of any service appeal against compulsory retirement of a government servant. There exists a valid policy reason for not incorporating such a provision: should the Tribunal consider any order of dismissal from service or compulsory retirement to be *prima facie* unjustified, it has ample jurisdiction to suspend the same.

ii) The concealment and suppression of facts regarding filing and pendency of an earlier appeal is material and consequential not only from the point of view of decision in this case but also from the perspective of administration of justice in civil cases. It is for this reason that Rule 1(a)(ix) of Part A to Chapter 1 (Judicial Business) in Volume V of Rules and Orders of the Lahore High Court requires that all judicial matters to be brought before the Court shall be accompanied by a certificate to the effect that as per instructions of the party no such petition/application or appeal has earlier been filed in the High Court in this matter. If a petition, application or appeal is filed through a counsel, signing of the certificate is his responsibility, who is obliged to disclose correct information on instructions or otherwise if in his personal knowledge. Any misstatement would lead to proceeding before the respective Bar Council in addition to rejection of relief for approaching the Court with unclean hands. Even though the Code does not stipulate such a Certificate, as a mandatory requirement of law, to be provided in relation to the proceedings before the courts subordinate to the High Court, nonetheless the High Courts and august Supreme Court frequently refuse to grant any equitable relief whenever the aforementioned inequitable conduct of a party to the proceedings is exposed. The principles of fair trial, as guaranteed by Article 10A of the Constitution, are to be read as an integral part of every sub-constitutional legislative instrument that deals with determination of civil rights and obligations of any person. The principle of equality of arms is violated in every case where there is a concealment of facts regarding earlier proceedings.

Conclusion: i) Pendency of appeal before the Tribunal *ipso facto* does not create any vested right to retain possession of the Quarter.
ii) Concealment or suppression of the fact about earlier filed appeal would render the appeal of the concealing party to be *void* thus liable to outright rejection.

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16. **Lahore High Court**
Faysal Bank Limited v. Government of the Punjab.
Writ Petition No. 25108 of 2015
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4166.pdf

Facts: The Petitioner is a banking company incorporated under the laws of Pakistan having its Registered Office at Karachi and one of its branches at Jail Road, Lahore. Respondent No.6 (Sub-Divisional Police Officer) issued an undated notice under sections 6 & 10 of the Punjab Security of Vulnerable Establishments Ordinance, 2015, which was received at the Petitioner's Jail Road Branch. The Petitioner has challenged the said notice

Issue: How an establishment may be declared as vulnerable establishment under the Punjab Security of Vulnerable Establishments Act, 2015?

Analysis: The provisions of the Act would apply to an establishment subject to two conditions: first, the Committee identifies it as a vulnerable establishment and makes a recommendation to the DCO for notification as such; and secondly, the DCO declares it a vulnerable establishment by notification.

Conclusion: See above.

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17. **Lahore High Court**
Federation of Pakistan v. Ex. Naik Mumtaz Hussain
Intra Court Appeal No. 04 of 2021 in W.P. No.2775/2011.
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC3989.pdf

Facts: This intra court appeal is filed against order of single bench wherein conviction of respondent under Pakistan Army Act, 1952 was set aside and matter was remanded back to trial court, with a direction to first fulfill the mandatory requirements as envisaged under Army Act and thereafter proceed with the matter in accordance with the law.

Issue: i) Whether the order passed by a single judge in constitutional petition can be termed as an original order as required by section 3 of LRO, 1972?
ii) Whether intra court appeal lies against an order where law provides remedy of at least one appeal, revision or review to any court?
iii) Whether intra court appeal lies against an order where remedy of appeal, revision or review is provided but not availed?

iv) Whether intra court appeal is maintainable against the order passed by a single judge pertaining to any order passed by any of the Courts martial under the Army Act.

Analysis: i) Term "original order" used in proviso to section 3(2) LRO, 1972 means an order passed by the original/first fora and not the order passed by a single judge of this Court in Constitutional petition. Order passed by a single judge in Constitutional petition cannot be termed as an original order as required by section 3 of LRO, 1972 or an order passed in original civil jurisdiction of High Court because such order is passed in Constitutional jurisdiction conferred by Article 199 of the Constitution

ii) The proviso attached to sub-section 2 of section 3 of LRO 1972 is relevant which, in most unequivocal terms, lays down that remedy of ICA is not available against an order of single judge having arisen out of proceedings in which applicable law provides remedy of at least one appeal, revision or review to any court, tribunal or authority against the original order.

iii) It is of utmost importance to clarify that availing of such remedy of appeal, revision or review is not a sine qua non to question the maintainability of ICA and it is sufficient if applicable law in the matter provides such remedy. It is irrelevant whether such remedy is availed by the aggrieved person or not.

iv) Perusal of section 119 to 126, 131, 133(B)(1) of Army Act and Rule 116 of Pakistan Army Act Rules, 1954 clearly establishes that remedies of appeal, revision, review, filing a petition etc. are available to aggrieved persons, against the original orders passed by different Courts martial. Therefore, we have no hesitation to hold that the bar contained provided in proviso to section 3(2) LRO, 1972 is fully attracted and ICA is not maintainable against the order passed by a single judge pertaining to any order passed by any of the Courts martial under the Army Act.

Conclusion: i) The order passed by a single judge in Constitutional petition cannot be termed as an original order as required by section 3 of LRO, 1972.

ii) Intra court appeal does not lie against an order where law provides remedy of at least one appeal, revision or review to any court.

iii) Intra court appeal does not lie against an order where remedy of appeal, revision or review is provided but not availed.

iv) Remedies of appeal, revision, review, filing a petition etc. are available to aggrieved persons, against the original orders passed by different Courts martial, therefore Intra court appeal is not maintainable against the order passed by a single judge pertaining to any order passed by any of the Courts martial under the Army Act.

18. **Lahore High Court**
Waqar Shaukat v. Deputy Commissioner etc.
W.P. No.50002 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC4112.pdf

Fact: The petitioner filed petition for issuance of direction to respondent No.3 not to demarcate the suit property, regarding which report of local commission has already been called by learned trial court.

Issue: When the jurisdiction of High Court under Article 199 of the Constitution can be invoked to defeat the provisions of a validly enacted statutory provision?

Analysis: Under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 resort and recourse to writ jurisdiction of High Court can only be made if there is no other adequate remedy available to a party. But it cannot be invoked in case of non-availability of the acknowledged grounds of judicial review i.e. illegality, irrationality, procedural impropriety or proportionality. Moreover, the Constitutional jurisdiction is equitable and discretionary in nature and cannot be invoked to defeat the provisions of a validly enacted statutory provision.

Conclusion: The jurisdiction of High Court under Article 199 of the Constitution can only be invoked if no other adequate remedy is available to a party and three acknowledged grounds of judicial review i.e. illegality, irrationality, procedural impropriety or proportionality, exist as well.

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19. **Lahore High Court**
Mst. Saima Mai v. DPO, etc.
Writ Petition No.11601/2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC3984.pdf

Facts: The petitioner filed the Constitutional petition under Article 199 of the Constitution of Pakistan1973 against harassment caused to her and her spouse illegally.

Issue: Whether public functionaries should be restrained from harassing and interfering in marriage of a sui juris and adult, out of free will and consent?

Analysis: Under Islamic law both male and female have the right to contract marriage with their own free will and their matrimonial life is protected under Article 35 of the Constitution. Under Articles 9 & 35 of the Constitution, it is bounden duty of State to protect the marriage, life and liberty of legally wedded couple. Such a sacred relationship founded by way of religious contract, entered into by two individuals to establish a home and start a family life, which is fundamental and primary foundation of society, should not be interfered with. It is therefore incumbent upon all state functionaries to act strictly in accordance with law and

not to transgress their lawful domain to disturb or disrupt the family life of a person without legal justification.

Conclusion: Public functionaries should remain within the four corners of law and desist from causing harassment in illegal manner to sui juris and adult who marry with person of his/her choice.

LATEST LEGISLATION/AMENDMENTS

1. **THE PUNJAB COMMISSION FOR REGULARIZATION OF IRREGULAR HOUSING SCHEMES (AMENDMENT) ORDINANCE 2021 (XXIII of 2021) [23 August 2021]**
   https://punjabcode.punjab.gov.pk/en/show_article/VmZdawY1WmpUNg--

   An Ordinance to amend the Punjab Commission for Regularization of Irregular Housing Schemes Ordinance 2021.

   It is necessary to amend the Punjab Commission for Regularization of Irregular Housing Schemes Ordinance 2021 (XVII of 2021) for better functioning of the Commission and for the ancillary matters.

2. **THE NAMAL UNIVERSITY, MIANWALI ACT 2021 (ACT XXV OF 2021)**
   https://punjabcode.punjab.gov.pk/en/show_article/VGRSZFZlBTVTMA--

   Whereas it is expedient to provide for the establishment of Namal University, Mianwali in the private sector, and to provide for matters connected therewith and ancillary thereto.

LIST OF ARTICLES

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

   WIDENING THE SCOPE OF WHITE COLLAR CRIME: UNVEILING SUBVENTION SCHEME FRAUD by Saloni Jain & Rohit Arya

   The concept of "White Collar Crime" found its place in criminology for the first time in 1941 when Sutherland published his Research Paper on White Collar Crime. Until now this term has not been defined in any statute per se but is usually used as an umbrella term to connote any offence which has a financial motivation, done by individual/s who belong to a certain societal class or position. For instance, Government Functionaries, Ministers, Executives of Major Cooperatives– People who are in the position of decision making and weighing power. In other words, White Collar Crime is a non-violent act and involves a breach of trust or breach of faith bestowed by an individual or institution on the perpetrator. White Collar Crimes in India are already seeing a huge rise/spike in cases relating to Health care fraud, financial fraud, Cyber fraud, Bankruptcy fraud, Government fraud, Land pooling fraud, and so forth.

2. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12300
   THE RISE OF DIGITAL JUSTICE: COURTROOM TECHNOLOGY, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE by Jane Donoghue

   This article addresses a little discussed yet fundamentally important aspect of legal technological transformation: the rise of digital justice in the courtroom. Against the backdrop of the government's current programme of digital court modernisation in England and Wales, it examines the implications of advances in courtroom technology for fair and equitable public participation, and access to justice. The article contends that legal reforms have omitted any detailed consideration of the type and quality of citizen participation in newly digitised court processes which have fundamental implications for the legitimacy and substantive outcomes of court-based processes; and for enhancing democratic procedure through improved access to justice. It is argued that although digital court tools and systems offer great promise for enhancing efficiency, participation and accessibility, they simultaneously have the potential to amplify the scope for injustice, and to attenuate central principles of the legal system, including somewhat paradoxically, access to justice.

3. **HARVARD LAW REVIEW**
   https://harvardlawreview.org/wp-content/uploads/2017/10/2434-2462_Online-Updated.pdf
   LAW'S BOUNDARIES by Frederick Schauer

   The history of law is in no small part the history of its boundaries. And the history of legal theory, or jurisprudence more narrowly, is thus a history of exploring, analyzing, and debating these boundaries……Law is a source-based enterprise, and understanding its nature accordingly requires understanding which sources constitute the law and which do not. It is only to be expected, therefore, that jurisprudential debates about the nature of law are so often debates about which sources of decisional guidance are to be treated as law — what counts as law.

4. **THE DAWN**
   https://www.dawn.com/news/1641821
   THE MENACE OF EMOTIONAL ABUSE AND WHY A DOMESTIC VIOLENCE BILL IS THE NEED OF THE HOUR by Barrister Muhammad Ahmad Pansota