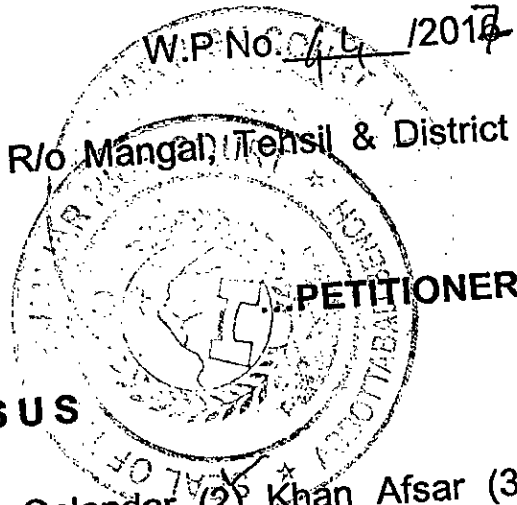


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**BEFORE THE HONORABLE PESHAWAR HIGH COURT**  
**ABBOTTABAD BENCH**

Mir Afzal Son of Said Alam R/o Mangal, Tehsil & District  
Abbottabad.



**VERSUS**

1. Mohammad Fareed S/o Qalandar (2) Khan Afsar (3)  
Chann Farooq Sons of Mohammad Fareed R/o Mangal,  
Tehsil and District, Abbottabad.
4. Mohammad Ilyas (5) <sup>Deen</sup> Mohammad Raza sons of  
Muhammad Ayub / (6) Saeed (son) (7) Mst. Sobia widow  
of Mohammad Nawaz (8) Mehboob (9) Maqbool (10)  
Zahoor sons of Yaqoob (11) Mohammad Aslam (12)  
Dawood (13) <sup>F</sup> Mohammad Sarwar (14) Chanzeb sons of  
Gulzaman R/o of Bandi Dhondan, Tehsil & District,  
Abbottabad ✓
15. Learned Additional District Judge-IV, Abbottabad.

**RESPONDENTS**

PETITION, UNDER ARTICLE 199 OF THE CONSTITUTION OF THE  
ISLAMIC REPUBLIC OF PAKISTAN, 1973, SEEKING  
DECLARATION TO THE EFFECT THAT VIOLATION OR  
DISOBEDIENCE OF THE TERMS OF DECREE OF PERPETUAL  
INJUNCTION OF LEARNED CIVIL JUDGE-IV, DATED 08/12/2016,  
WAS A CONTEMPT OF CIVIL NATURE AND, AS SUCH, WITHIN  
THE CONTEMPLATION OF SECTION 10 (2) OF THE CONTEMPT  
OF COURT ORDINANCE 2004, WAS COGNIZABLE BY THE SAME  
COURT AND THEREFORE, THE JUDGMENT AND ORDER, DATED  
08/12/2014, OF THE LEARNED ADDITIONAL SESSION JUDGE-IV  
ABBOTTABAD, ACCEPTING THE RESPONDENTS' REVISION

13/1/17

13/1/17

13/1/17

Judgment Sheet

IN THE PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH,  
JUDICIAL DEPARTMENT

W.P.No.44-A/2017.

JUDGMENT

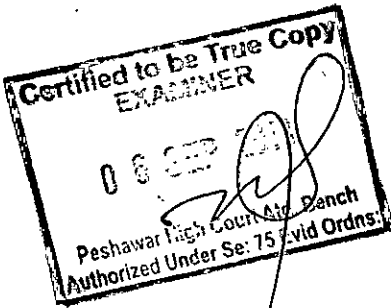
Date of hearing.....09.08.2018.

Petitioner (Mir Afzal) by Syed Altaf Hussain Shah,  
Advocate.

Respondents (Muhammad Fareed and others) by  
Mr. Muhammad Saleem Awan, Advocate.

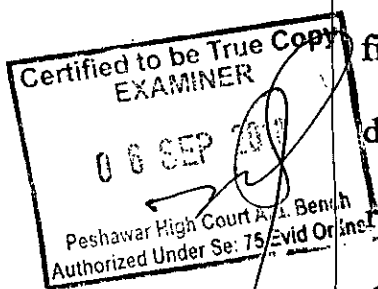
**SYED ARSHAD ALI, J:-** The petitioner seeks the  
constitutional jurisdiction of this Court praying that:-

*“In view of facts and grounds, as submitted above, it is most humbly, prayed that, on acceptance of the instant petition, the impugned judgment/order dated 08.12.2016, of the Learned Additional Sessions Judge-IV, Abbottabad, may graciously be set aside and the order of the Learned Additional Sessions Judge-IV, Abbottabad, may graciously be set aside and the order of the Learned Trial Court dismissing the objection petition of the respondents be maintained. OR any other relief as this Honourable Court deems appropriate, just and equitable may also be granted.”*



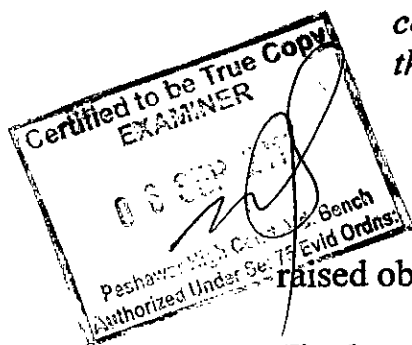
2. Brief, but relevant, facts of the instant writ petition are that on 24.04.1991, the present petitioner had instituted a suit No.216/1 before Civil Court at

Abbottabad seeking permanent injunction against the defendants to the effect that the defendants be restrained from interfering in the suit property comprising of Khasra No.131 situated at Moza Jalalpura Tehsil and District Abbottabad. The said suit was decreed by the learned trial Court vide judgment and decree dated 27.03.2003. The said judgment and decree remained upheld before the learned appellate court as well as before this court. The present petitioner filed an execution petition before the learned executing Court seeking enforcement of the aforesaid decree and thereby seeking restoration of the property in the said Khasra as he claimed that the respondent had dispossessed the petitioner from the decreed property. The said execution petition of the petitioner was dismissed on the objection raised by the respondents. Appeal and revision petition filed against the orders of learned executing Courts dismissing execution petition also met with the same result. Against the dismissal of revision petition by this Court arising out execution proceedings, the present petitioner had filed review petition No.14-A/2014 seeking review of the order of this Court. However, on



04.12.2014, on the request of present petitioner the said review petition was dismissed as withdrawn and this court accorded permission to the Petitioner to file fresh execution petition in respect of decree, if permissible under the law. Resultantly, the petitioner had filed an application before learned execution Court for the enforcement of decree dated 27.03.2003 with the following prayer:-

*"In view of the facts and grounds, as submitted above, it is humbly prayed that, on acceptance of this petition, the respondent (JDs), may, kindly be proceed against for their contemptuous and contumacious violation of the decree and order dated 17.07.2003 of this learned Court and the possession of the property of which he has been forcibly dispossessed by the respondents (contemnors) may graciously be restored to him and the decree dated 17.07.2003 be executed in its real terms Or any other relief with the terms of the decree dated 17.07.2003, this Honourable Court deems proper, just and convenient, may, graciously be granted to the petitioner."*



Upon being summoned, the respondent

raised objection to the maintainability of the said petition.

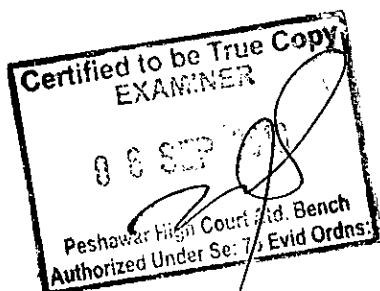
The learned trial Court while dismissing the objection of the respondent has held that the petition filed by the petitioner was maintainable. Whereas learned revisional

Court has accepted the revision petition of the Respondents thereby holding that contempt proceedings before learned trial Court are not maintainable, hence, this petition.

3. Arguments heard and record perused.

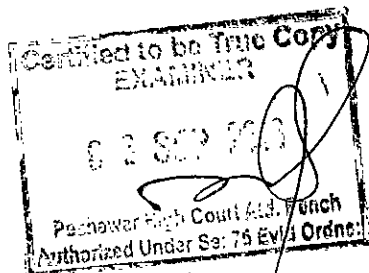
4. The only point for determination in this petition is that; Once a civil court has passed a decree for perpetual injunction, restraining the judgment debtors from interference in the suit property, whether proceedings either under the Contempt of the Court Ordinance 2003 or any other provision of Civil Procedure Code 1908 "CPC" can be initiated against the person/judgment debtor who has allegedly violated the said decree of the court, when the execution petition was also dismissed being not maintainable? In order to find answer to the said query, we have to carefully go through the provisions of law relating to the contempt of Court as provided in the Contempt of Court Act/Ordinance and other statutes i.e. CPC, Code of Criminal Procedure, 1898 ("CrPC") and Pakistan Penal Code, 1860 ("PPC").

5. Since the matter relates to the enforcement of a decree passed by a civil court, therefore, first I would



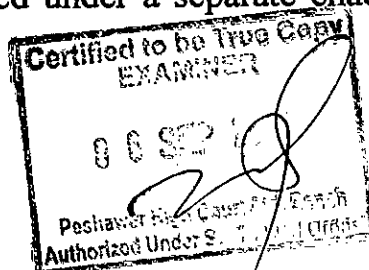
like to refer to the enabling provisions of the CPC relating to execution and enforcement of a decree. Enforcement and execution of a decree passed by a competent Civil Court has its own mechanism provided under Part II (section 36 to 74) and Order 21 of the CPC. The civil Courts under the CPC have been empowered to execute decree against the judgment debtor through various modes, which may include arrest and detention of the judgment debtor, attachment and sale of his property (both moveable and immovable) and even committing the person to civil prison who is instrumental in obstructing the process of execution of the decree. Indeed, the executing Court under the CPC has all the powers to meaningfully execute the decree. However, punishing any person for disobedience of the Court's decree or orders or causing insult and interruption in the Court proceedings are dealt with under PPC and Contempt of Court laws.

The word "*contempt*" has neither been defined in the CPC nor in PPC. However, section 228 of PPC, envisages that whoever intentionally offers insult or causes any interruption to any judicial officer, while

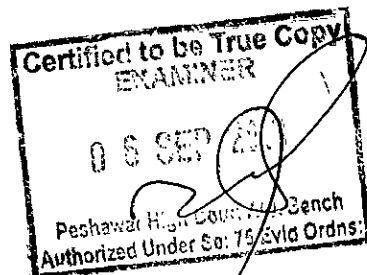


such judicial officer is conducting a judicial proceedings, is punishable under the same section of law. The mechanism for initiation of the offence under section 228 PPC and other offences relating to violation of orders passed by a public servant under section 182 to 190 are provided through section 195 of the Cr.PC. Similarly, under order 39 of the CPC, the Court is competent to prosecute any person, who has violated any order of the trial Court relating to temporary injunctions. However, both the CPC and PPC are completely silent regarding any act of the judgment debtor in violation of Court decree after the satisfaction of the decree or dismissal of the execution petition. Indeed no mechanism has been provided under the aforesaid curial and substantive laws.

6. However, in such circumstances as stated above, the person who complains against violation of the court decree is not remediless. In order to establish the authority of the court and to ensure the compliance of its order, the law relating to punish any person who violates the order/decreed or directions of the court has been provided under a separate enactments relating to

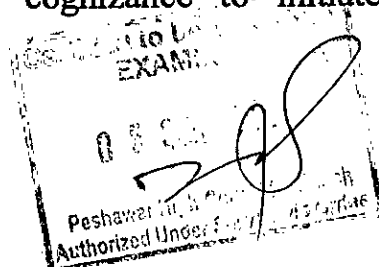


contempt of courts. The law relating to contempt of court in subcontinent was enacted through Contempt of Court Act, 1926 Act No.XIII of 1926 ("Act of 1926"). According to section 2 of the Act *ibid*, it was only the High Court that had the jurisdiction to initiate contempt of court proceedings against the person who had allegedly committed the contempt of subordinate Courts. However, the word "*contempt*" was not defined in the Act of 1926. Through Contempt of Court Act, 1976 ("Act of 1976"), the Act of 1926 and other contempt laws were repealed and new law on Contempt of Court was promulgated. According to section 3 of the Act of 1976, the word "*contempt of court*" was defined as any person, who has disobeyed or has disregarded any order, direction or process of the Court, which the person is legally bound to obey, amounts to contempt of Court. However, under section 5 of the Act of 1976, only High Court could exercise jurisdiction relating to the contempt of Court of the subordinate Courts. The Act of 1976 was repealed through Contempt of Court Ordinance, 2003 ("Ordinance of 2003"). In the Ordinance of 2003 the



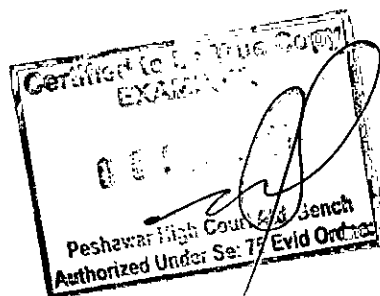


meaning of the Contempt of Court has been categorized as *civil contempt, criminal contempt and judicial contempt*. Under the Ordinance of 2003 violation of any order/decreed of the civil Court is defined as civil contempt and punishable under the Ordinance of 2003. However, the jurisdiction to initiate proceedings under Ordinance of 2003 for violation of the decree or order of any court has been provided under section 4 of the Ordinance to have vested in High Court. Therefore, the jurisdiction to initiate contempt of court proceedings for violation of court decree or order under the contempt laws always vested in High Court and the subordinate Courts were never vested with any jurisdiction to initiate proceedings. The subordinate Courts were only provided with the jurisdiction to initiate proceedings and convict the persons for interrupting any judicial proceedings or insult judicial officer in the process of any judicial proceedings as provided under section 228 of PPC or Order 39 of the CPC. Although violation of orders, judgments and decrees of the subordinate courts amounts to contempt of Court but the cognizance to initiate contempt



proceedings always remained with the High Court in all acts referred above relating to contempt of Court. Gh. Muhammad Ramzan Vs. The State and 2 others (1982 P.Cr.L.J 1061), Yar Muhammad Vs. The State (1990 P.Cr.L.J 1736) and Said Muhammad Vs. Sultan Ahmad and 7 others (2000 CLC 387).

7. In the present case admittedly on 27.03.2003 a decree for perpetual injunction was passed in favour of petitioner, which remained intact up-to this Court. However, when during execution proceedings it was brought before the trial Court that the petitioner was dispossessed from the suit/decreed property, his execution petition was dismissed as not maintainable. The said order was upheld by this Court in its judgment dated 20.10.2014. The allegations contained in the application filed before the trial Court by the present petitioner that in disregard of the decree of perpetual injunction he was dispossessed, may constitute an offence under section 2 (a) (i) read with section 3 of the Ordinance of 2003, however, as stated above, the subordinate Court had no jurisdiction either to initiate any action against the alleged contemnor under the

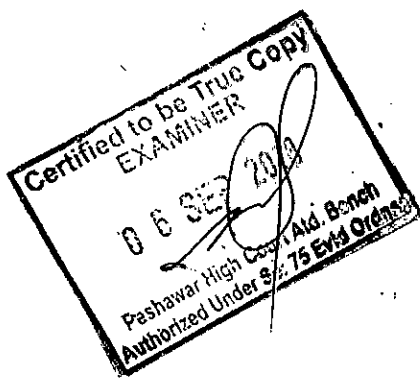


Ordinance of 2003 or CPC for contempt of Court. It is only the High Court which has the jurisdiction under section 4 of the Ordinance of 2003 to initiate contempt of Court proceedings against any person who has allegedly committed contempt of any civil Court.

8. Resultantly, this petition has no force and the impugned judgment passed by the learned revisional Court wherein it has been held that petitioners' contempt petition is not maintainable is correct and does not call for any interference by this Court, hence, the same stands dismissed.

Announced.  
Dt.09.08.2018.

*Syed Arshad Ali*



Aftab P.S\*

Justice Syed Arshad Ali.