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**Probation of Offenders Ordinance, 1960, community service orders, and applicability of Shari'ah principles in the interpretation of laws.**

**Qazi Faez Isa, J.**

6. A convict may be placed under the supervision of a probation officer (for a period of one year to three years) provided he executes a bond stipulating that he shall not commit any offence, shall keep the peace and be of good behavior, and must abide by any other condition of his
probation, failing which he shall appear and receive sentence if called upon to do so during the period of his probation.
7. The preconditions permitting the making of a probation order with regard to the petitioner are met. The petitioner is a young man and, on our query, the learned APG informed us that he does not have a criminal record. We are in agreement with the observations made by a Division Bench decision of the Peshawar High Court, which held that:

'8. The object of punishing an offender is the prevention of offences or reformation of the offender. Punishment would be a greater evil, if instead of reforming an offender, it is likely to harm the offender to repetition of crime with the possibility of irreparable injury to him.
The provisions of the Probation of Offenders Ordinance are, thus, intended to enable the Court to carry out the object of reformation and give the accused person a chance of reformation which he would lose by being incarcerated in prison.'

8. Section 5(2) of the Ordinance stipulates that any condition may be imposed 'for rehabilitating him [the convict] as an honest, industrious and law-abiding citizen.' The Probation of Offenders Rules, 1961 ('**the Rules**') set out the duties of a probation officer, which include, to 'encourage every probationer placed under his supervision to make use of any recognized agency, statutory or voluntary, which might contribute towards his welfare and general well-being, and to take advantage of the social, recreational and educational facilities which such agencies might provide'.7 Incidentally, the Province of Khyber Pakhtunkhwa has enacted a law (The Khyber Pakhtunkhwa Probation and Parole Act, 2021) which envisages unpaid community service which a convict may be ordered to do in a probation order. However, community service is not specifically provided for in the Ordinance, and it is the Ordinance which governs the province of
Punjab.

10. The first recorded use of what may be akin to a community service order was by Prophet Muhammad (peace and blessings be upon him) when after the Battle of Badr a prisoner could earn his freedom by teaching ten Muslims to read and write. A renowned Muslim jurist14 uses the phrase fida' bil 'amal with regard to the Battle of Badr prisoners who had secured their release on teaching, which would translate as, securing release on account of your deeds. This may also constitute fatwah.

15. The learned Judge of the Trial Court shall order the release of the petitioner on probation upon the petitioner submitting the said bond, incorporating the noted terms, in the sum of fifty thousand rupees with one surety in the same amount, to the satisfaction of the Trial Court. However, if the petitioner fails to observe any of the conditions of his bond the Court may issue summons or warrant of his arrest, and, if after hearing the petitioner, the Court is satisfied that he has failed to observe any of the conditions of his bond, the Court may sentence him by restoring his original sentence and if the petitioner fails to pay the said compensation, he shall be dealt with in terms of section 6(3) of the Ordinance. Consequently, the sentence and fine, and sentence in default of fine, are set aside.

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**Criminal Petition No. 345 of 2022 - KHAWAR KAYANI Vs The STATE etc.**

**Juvenile accused---Bail---Delay in conclusion of trial**

**SYED MANSOOR ALI SHAH, J.**

6. In the present case, the petitioner was arrested on 18.03.2021 and he had been detained for a continuous period exceeding six months since his detention and his trial had not been completed when he applied for the relief of bail before the trial court and the High Court. The trial court declined the relief of bail to the petitioner without discussing the fact who was at fault for the delay in completion of the trial. While the High Court noted that the delay occurred due to failure of the Investigating Officer in timely submission of the final report under Section 173 of the Code of Criminal Procedure 1898. In the latest report submitted by the trial court, dated 25.05.2022, on requisition of this Court, it has been reported that the delay has occurred due to filing of a private complaint by the complainant. The delay in completion of the trial is thus not attributable to any act or omission of the petitioner or any other person acting on his behalf, and the petitioner is therefore entitled to be released on bail, as of right, under Section 6(5) of the Act.

7. What is more disquieting is that the High Court has declined the relief under Section 6(5) of the Act to the petitioner, by holding in the impugned order that period of six months is to be counted from 15.11.2021 when the petitioner was determined by the trial court to be a juvenile and not from 18.03.2021 when he was arrested. We think that attention of the High Court was not invited to the judgments of this Court delivered in the cases of Nadeem Samson,[4] and Shakeel Shah relating to 3rd proviso to Section 497(1) Cr.P.C., which contains similar provisions, and of Saleem Khan relating to Section 6(5) of the Act; this Court has held in these cases that the period of delay in the conclusion of the trial is to be counted from the date of the detention of the accused in the case. The period of six months mentioned in Section 6(5) of the Act is therefore to be counted from the date of arrest of the juvenile, after determination of his age and not from the date of such determination or adjudication by the Court.

**Uzma Naveed Chaudhary VS Federation of Pakistan**

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1347_2019.pdf

**(i) Objectives of the Protection against Harassment of Women at the Workplace Act 2010, highlighted (ii) Constitutional foundations of rights to 'gender equality' and 'safe working environment', explained (iii) meaning and scope of right to 'dignity', narrated (iv) Complaints against sexual harassment to be decided on merits irrespective of the delay in reporting the matter, emphasized.**

**SYED MANSOOR ALI SHAH, J.-**

7. We have gone through the decision of the Federal Ombudsman and the order of the President, and found that both have minutely examined and thoroughly discussed the evidence of the parties. We find no misreading or non-reading of any material evidence of the parties that could have constituted an error of law to justify interference with the said findings of facts by the High Court in its constitutional jurisdiction. Needless to state that a High Court cannot interfere, in its constitutional jurisdiction, with findings of fact recorded by the competent courts, tribunals or authorities unless such findings are the result of misreading or non-reading of the material evidence or based on no evidence, which amounts to an error of law and thus justifies, rather calls for, interference.4 In absence of any misreading or non-reading of the material evidence, the High Court has rightly not interfered with the concurrent findings of facts recorded by the Federal Ombudsman and the President, regarding the culpability of the respondent.

8. However, we find that the observation of the High Court for setting aside the order of the

President as to the enhancement of the punishment, on the ground that no reason was provided by the President for enhancing the punishment, is against the record. The High Court has quoted para 28 of the order of the President in the impugned judgment, which is the operative part of the order, and has missed to note that para 27 thereof contains: (i) the discussion on the evidence of the parties for confirming the finding of fact as to the culpability of the respondent, and (ii) the reasons for enhancement of the punishment As the High Court has maintained the concurrent findings of facts recorded by the Ombudsman and the President on the culpability of the respondent, we do not find it necessary to rediscuss and reappraise the evidence of the petitioners. The reasons for imposing a particular penalty (punishment), after the determination of culpability (conviction), though are distinct and separate from the proof of the allegation (charge), but they need not bear a separate heading or be narrated in a listed or compact form. Such reasons may, and ordinarily do, form part of the discussion on the overall facts and circumstances of the case, as has been done by the President in the present case in para 27 of his order. For enhancing the penalty of the respondent, the President has observed that the respondent was involved in the molestation and harassment of the petitioners; that the petitioners have no grudge to falsely implicate the respondent in such heinous allegation; that the petitioners are respectable women, working for several years in PTV, and have never lodged any complaint of sexual harassment against any of their colleagues or superiors; that the petitioners are well-educated women and leading happy family lives, and it is not expected from them to level such allegations against the respondent without substance; that the respondent was in habit of using the filthy and threatening language for his subordinates and colleagues; that the conduct of the respondent has remained immoral throughout his service career; and that the purpose of punishment is not only reformatory but also creating deterrence against heinous crimes, such as, the sexual harassment at the workplace. The High Court has failed to appreciate that the President has given due and judicious consideration to the facts and circumstances of the case for enhancing the punishment of the respondent. In view of the said observations of the President, the ground furnished by the High Court for setting aside the President's order is found legally not sustainable.

9. So far as the objection of the respondent that there is a long delay in lodging the complaint by the petitioners against him after the alleged incidents of harassment is concerned, the President has rightly rejected the same and observed that delay in such cases is understandable. In our social and cultural setting where prevailing notions of family honour and taboos play a dominant role, it is not easy for a woman to speak up about such deeply disturbing incidents. There is also the apprehension of counter allegations hurled against her character by the delinquent. For these and other reasons, many cases of sexual harassment remain unreported. Victims of sexual harassment who exhibit the courage to report the matter against all odds should not, therefore, be turned away on the ground of delay in lodging the complaint. The courts, tribunals and authorities concerned must take a lenient view on the delay in filing the complaint by the victim and decide the case on merits. This will encourage victims to come forward to seek justice. The principle enunciated by this Court in several criminal cases5 involving sexual assault, that delay in reporting the incident to the police in such cases is not material, equally applies to the complaints of sexual harassment made under the Act.

11. Lately, the Parliament of Pakistan has further enlarged the scope of the Act, to realize its objective more effectively, by enacting the Protection against Harassment of Women at the Workplace (Amendment) Act 2022 ("**Amendment Act**"). The Amendment Act has extended the application of the Act by adding in the definition of "employee" the informal workers without a contract, freelancers, domestic workers, interns, trainees, apprentices, students, performers, artists, sportspersons, etc., and by extending the definition of "workplace" to anyplace where services are rendered or performed by professionals, including educational institutions, gigs, concerts, studios, performance facilities, courts, highways, sporting facilities, gymnasiums

etc. The Amendment Act has also redefined the expression "harassment" and has included therein "discrimination on the basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mindset or notion, resulting in discriminatory behavior on basis of gender against the complainant". Although it is evident from the words, "demeaning attitude", that the expression "sexually demeaning attitude" used in the definition of "harassment" means demeaning attitude on the basis of sex, the Amendment Act has further clarified it by providing that it includes "any gesture or expression conveying derogatory connotation" that causes "interference with work performance or creating an intimidating, hostile or offensive work environment", and covers conduct that discriminates against persons because of their gender and creates an intimidating or hostile working environment. Any conduct that is rooted in gender-based discrimination and creates an abusive and hostile working environment is harassment under the Act, which is not restricted only to conduct that is related to the act of sex. Many forms of pervasive harassment in the workplace, including denial of equal opportunities as well criticism of one's abilities on the basis of gender, also comes within the ambit of harassment.

12. The Amendment Act has substituted the expression "a woman or man" with "any person" in the definition of "complainant" and has thus made applicable the protection of the Act to transgender persons also. The scope of the Act is not restricted to women only but it protects everyone – male, female and transgender persons. This change in the Act is commendable, as it would now extend the protection to transgender persons also, who are often the most vulnerable to different forms of harassment. The amendments introduced in the Act, we hope, would play an important role to realize the constitutional ideals and values of liberty, dignity, equality and social justice for women and transgender persons in Pakistan.

14. It is underlined that dignity is an inherent and inseparable right of a human being and has thus been guaranteed by our Constitution as an absolute, non-negotiable and inviolable fundamental right that is not subject to any qualification, restriction or regulation. Dignity values the worth of each person and requires the recognition of each person's worth to be held in equal measure for all. It is harmed when individuals are marginalized, ignored or devalued, and is enhanced when the full place of all individuals within the society is recognized. The right to dignity under Article 14 and the construct of "gender equality" turns "sexual harassment" on its head and buries it deep underground. The universal value of human dignity provides that "all human beings are born free and equal in dignity and rights." It shuns patriarchy, misogyny and the age-old archaic and dogmatic social norms, and nurtures progressive and forward-looking constitutional ideals of liberty, equality and social justice. It is time to bid farewell to gender biases and prejudices, and pave the way towards the actualization of these robust and unwavering constitutional ideals and values by embracing the participation of women in all spheres of life with honour and dignity. "No nation can rise to the height of glory", in the words of the Founder of our Nation, Muhammed Ali Jinnah, "unless your women are side by side with you. We are victims of evil customs. It is a crime against humanity that our women are shut up within the four walls of the houses as prisoners. There is no sanction anywhere for the deplorable condition in which our women have to live."

**P L D 2022 Supreme Court 546**

**Civil Petition No. 34-Q of 2019 - ABDUL BAQI Vs Haji Khan Muhammad etc**

**"Contempt of Court" Nature and scope Jurisdiction of the Supreme Court U/A 185(3)**

**YAHYA AFRIDI, J.**

6. At the very outset, we may observe that the matter of contempt of court is essentially a matter between the court and the alleged contemnor. Therefore, if the court concerned, in exercise of its discretion, does not take any action for its alleged contempt or accept the apology rendered by the alleged contemnor, for certain reasons, the appellate court would not ordinarily substitute its own opinion and direct that court to proceed in the matter necessarily or reject the

apology so rendered. This general principle of practice and propriety, as to non-interference in the discretionary orders of the High Court declining initiation of contempt proceedings against the alleged contemnors, was enunciated by a five-member larger bench of this Court in the case of WAPDA v. Chairman N.I.R.C., thus:

> The matter of contempt is essentially between the Court and the contemnor. If the Court concerned for reasons of its own and in the exercise of its discretion does no feel inclined to take any action or for example accepts an apology in a given case, it is not for any other Court much less an appellate Court or authority to direct the said Court that it must proceed in the matter or to reject the apology. This is on the principle that the power to punish for contempt is to be exercised only by the High Court whose contempt has been committed and not by another Court.

What is also important to note is that, the said general principle is not absolute and, like other such principles, admits exceptions. This Court has time and again held that, though discretionary orders passed by the High Courts are not generally interfered with but they are not immune from scrutiny, if they are found to be arbitrary, perverse, or against the settled principles of law. That is why this Court in M.H. Khondkar v. State asked the petitioner, who was aggrieved of the order passed by the High Court dismissing his contempt application, to file a separate petition for leave to appeal against that order.

7. In the neighbouring jurisdiction also, their apex court has held in Midnapore People's Co-operative Bank v. Chunilal Nanda, that in special circumstances, an order declining to initiate proceedings for contempt may be open to challenge before it, by seeking special leave to appeal under Article 136 of their Constitution, which is similar to Article 185(3) of Constitution of the Islamic Republic of Pakistan 1973 ("Constitution"). Thus, while this Court does not ordinarily interfere with the order of a High Court, declining to initiate contempt proceedings, but where such order, particularly passed on a petition of an aggrieved party for civil contempt, is found to be arbitrary, perverse or against the settled principles of law, the same may be corrected by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution on a petition of the aggrieved party.

8. It would also be pertinent to observe here that the ultimate jurisdiction of this Court under Article 185(3) of the Constitution to grant leave to appeal against any judgment, decree, order or sentence of a High Court is not circumscribed by any limitation by the Constitution.[5] The principles governing the exercise of this jurisdiction are of self-restraint, settled by the Court itself, keeping in view the considerations of propriety and practice. This Court thus ordinarily exercises its jurisdiction under Article 185(3) of the Constitution, and grants the leave to appeal, as held by a six-member larger bench of this Court in Noora v. State[6], in cases where some serious question of law is prima facie made out or some case of grave miscarriage of justice is established either by reason of the fact that the findings sought to be impugned could not have been arrived at by any reasonable person or that the findings are so ridiculous, shocking or improbable that to uphold such a finding would amount to a travesty of justice. Therefore, only when the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can the same be interfered with by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution.

**P L D 2022 Supreme Court 523**

**Criminal Appeals Nos. 531, 532 of 2019 - MUHAMMAD NAWAZ etc Vs The STATE etc**

**Law governing "Common Object & Common Intention" its proof & applicability.**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.**

6. During the course of proceedings before this Court, a query was made to the learned counsel for the appellants qua the legality of

conviction and sentence recorded by the Trial Court. Although it is an admitted fact that the learned Trial Court while framing charge against the appellants and other co-accused had charged them for the offences of 'common object' falling under Sections 148/149, P.P.C. but while deciding the lis each accused was dealt on the basis of 'individual liability' especially with reference to the injuries caused to PWs. The conviction was recorded against the appellants for the murder of two deceased persons. However, the applicability of Sections 148/149, P.P.C. with reference to other co-accused was totally ignored and they were convicted on the basis of 'individual liability' without assigning a 'definite finding' regarding their participation as members of unlawful assembly and commission of offences in furtherance of their common intention falling under Sections 148/149, P.P.C. When the appellants and co-accused were specifically charged for having committed the crime in furtherance of their common object, the learned Trial Court ought to have given a definite finding regarding the applicability of Sections 302/ 148/149, P.P.C. to the co-accused qua the charge of murder. The learned courts below ignored the fact that all the accused committed their respective overt acts in furtherance of their common object, and as such they were part of the unlawful assembly, hence, the conviction and sentence recorded against the accused on the basis of individual liability in the absence of any "definite finding" to negate that the act of each individual was without premeditation, is beyond the scope of law. The act of each individual, if committed in furtherance of the common object, the facts are to be dealt conjointly to arrive at a conclusion in the spirit of law of the land. This query with reference to the facts and circumstances of the instant case could not be controverted by the learned counsel for the appellants. Even the learned Law Officer conceded that the learned Trial Court ought to have given a "definite finding" as to whether the occurrence was committed by the accused in furtherance of their common object or not.

13. A careful analysis of the aforesaid categories falling under the provision of Section 302, P.P.C. abundantly makes it clear that the provision of Section 302(a), P.P.C. is a distinct provision having different mode and manner of application with different considerations exclusively derived from the Islamic judicial system. The proceeding under the aforesaid provision is a rare phenomenon whereas the majority of the cases dealt with by the courts below fall under Section 302(b), P.P.C. As stated above, provision of Section 302(b), P.P.C. provides two sentences i.e. death, (ii) imprisonment for life. Murder cases exclusively falling within the ambit of Section 302(b), P.P.C. would be dealt with in a manner exclusively depending upon the number of assailants. Undeniably a single assailant can commit the aforesaid offence but if the number of assailants is more than one and the offence is committed in furtherance of common intention then the provision of Section 34, P.P.C. would certainly attract. Similar to that if the tally of the accused is five or more and the offence is committed in furtherance of common object then the provision of Sections 148/149, P.P.C. would be applicable. The learned Trial Court seized of the matter depending upon the number of accused has to render a definite finding qua the applicability of Section 34, P.P.C. (common intention) or Sections 148/ 149, P.P.C. (common object). These two legal aspects are to be addressed with the application of the aforesaid provision of Section 302(b), P.P.C. depending upon the number of assailants. It is bounden duty of the courts below to ascertain the aspect of common intention or common object primarily at the time of framing of the charge on the basis of contents of FIR, statements under Sections 161, and 164, Cr.P.C, if any, final report under Section 173, Cr.P.C. and other attending documents collected by the

Investigating Officer during investigation. The Trial Court is equally responsible to give a definite finding qua the applicability of Section 34, P.P.C. or Sections 148/149, P.P.C. at the time of conclusion of the trial while handing down the judgment. Now adverting to the moot point which was raised during the proceedings that if anybody is found guilty of commission of offence attracting the provision of Section 302(b), P.P.C., the co-accused can be saddled with the responsibility on the basis of individual liability or the whole occurrence has to be decided keeping in view that the offence was committed in furtherance of their common intention and the provision of Section 302(b), P.P.C. would be applied conjointly against the persons joining hands falling under either of the categories i.e. common intention or common object falling under Section 34 or 148/149, P.P.C. depending upon the number of persons facing charge. We may observe that any judgment which concludes the commission of offence falling under Section 302(b), P.P.C. in furtherance of common intention or common object but decides the lis on the basis of individual liability would be squarely in defiance of the intent and spirit of law on the subject.

**P L D 2022 Supreme Court 504**

**Civil Petition No.2711 of 2019 – ABDUL AZIZ**
**Vs Mst. ZAIB-UN NISSA etc**

**Depriving illiterate and Pardanashin Sisters from inherited property through fake and bogus gift deed**

**MUHAMMAD ALI MAZHAR, J**

5. The rules regarding transaction by a Pardanashin lady are evenly applicable to an illiterate and ignorant woman though she may not be Pardanashin lady in a strict sense. The all-encompassing evidence recorded in the Trial Court exemplifies that the donors were not aware as to which type of document, they are going to sign but, taking advantage of their illiteracy, the defendant managed the execution of the gift in his favour. Nothing was brought on the record to prove that any disinterested, neutral or nonaligned person read over the indenture of the gift to the illiterate and Pardanashin ladies. The document severely and gravely jeopardizing the interest of an illiterate and Pardanashin lady in favour of any person having a relationship of profuse confidence and faith with them requires stringent testimony and authentication of execution with the assurance of independent and unprejudiced advice to such lady with further confirmation and reassurance without any doubt that the description, repercussions and aftermath/end result of the transaction was fully explained and understood. The burden of proof shall always rest upon the person who entreats to uphold the transaction entered into with a Pardanashin or illiterate lady to establish that the said document was executed by her after mindfulness of the transaction. Whether a lady is a Pardanashin or illiterate is always a question of fact and the burden of proof rests upon the person asserting any right under any deed or document that was signed or affixed with a thumb impression by a Pardanashin or illiterate lady voluntarily and consciously. It is imperative for the Court as an assiduous duty and obligation that, while dealing with the instance of any document executed by a Pardanashin or illiterate lady, it ought to be satisfied with clear evidence that the said document was in fact executed by her or by a duly constituted attorney appointed by her with full understanding and intelligence regarding the nature of the document. The Pardanashin ladies have been given a protection time immemorial in view of social conditions that include an imperfect knowledge of the world being virtually excluded from communion with the outside world. The rationale of this rule of wisdom and concentration is obviously to shield them from deception, duress and misrepresentation.

## PESHAWAR HIGH COURT, PESHAWAR.

**Akhtar Zaman vs The State**

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/BA-1882-2022-Judgment-(11.08.2022).pdf

Cr Misc (Bail Application) No.1882-P/2022

**The Bail under section 466 CrPc: the principles elaborated.**

**QAISER RASHID KHAN, CJ. –**

Accused- petitioner seeks his release on bail in case FIR No.384 dated 15.07.2016 under Sections 302 I 34 PPC of Police Station Urmar, District Peshawar.

9. Before attending to the application in hand of the accused-petitioner, it would be more apt to refer to section 466 CrPc, which is the relevant provision of law on the subject and hence reproduced as under: -

**S. 466. Release of lunatic pending investigation or trial.** (1) Whenever an accused person is found to be of unsound mind and incapable of making his defense, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) Custody of lunatic. If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit and shall report the action taken to the Provincial Government:

11. No doubt, sub-section (1) of Section 466 CrPc provides a mechanism for the release of an accused of unsound mind but such provision of law cannot be strict senso applicable to every case like the instant one. Even otherwise, keeping in view the conflicting opinions of the two Standing Medical Boards and also his previous criminal history to be involved in several different FIRS, the accused-petitioner cannot press into service sub-section (l) of section466 CrPc for his release on bail. That is how the learned trial court has rightly ordered to refer him to the Mental Ward of the Police & Services Hospital and in the meanwhile adjourned the trial proceedings sine die. Such proceedings can be revived as and when the accused-petitioner is declared fit by the Standing Medical Board after his recovery from such ailment.

12. Such being the position, no case is made out for the grant of bail to the accused-petitioner on medical grounds.

**Nisar bibi w/o Gohar Ali; and 2. Gohar Ali son of Sabaz Ali Vs Government of Khyber Pakhtunkhwa Through Chief Secretary and others and Sajad, Asghar Kosar Majid sons of petitioners**

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Nisar-Bibi-etc-vs-Govt-of-KP-_parents-writ-against-sons_.pdf

**The status of parents in Islam discussed**

**ROOH-UL-AMIN KHAN:**

In civil society Human rights are the basic standards that people need to live in dignity. In addition to the rights that are available to all people, there are rights that apply only to parents. It is clear that after Allah the parents are the persons who give innumerable favors to the children. They provide protection, food and clothing to the newly born. Mother sacrifices her comforts and sleep for providing comfort to her children. Father works hard to provide for their physical, educational and psychological (and spiritual) needs. After Allah parents not only deserve for thanks and obedience for the favours they had done to their children but all the young members of either sex are morally, ethically and religiously bound to serve, facilitate, maintain and alleviate their parents. No doubt, in the developed countries, provisions of care to elderly parents has become a common event and the

governments are constrained to develop Institutional structure for old age caring, but in this part of the world, the social families bonds have been strengthened by the religion of Islam. The Holy Quran lays stress on feeling grateful to parents, and doing good to them.

'And the Lord hath decreed that you worship none but Him and that you be kind to parents, (behave kindly with them and do not compel them to bring their needs to your attention; but fulfill their requirements before they have to tell you, even though in reality they are not in need of your assistance); if one or both of them attain old age in thy life, (and be-come angry with. you) say not to them a single word of contempt''… . . .(24).

The status of parents in Islam is very high. Every Muslim is bound to give respect and love to their parents as they are to be treated well at all times because this is a virtuous kind of act in the sight of ALMIGHTY ALLAH. Parents and children in Islam are bonded together by mutual obligations. ALLAH ALMIGHTY says in Holy Quran: "No mother should be harmed through her child and no father through his child…" (Quran 2: 233). In Holy Quran respect of parents is mentioned about eleven times, ALLAH ALMIGHTY has mentioned in every instance to recognize and to appreciate love and care that the parents gave to child. Regarding this ALLAH says in Holy Quran: "And We have enjoined upon man goodness to parents…" (Quran 29:8 & 46:15 Islam explained that every Muslim must show kindness and mercy to his parents throughout their lives. It is obligatory on children to show love, respect, and gratitude to their parents. Always speaks to parents gently and respectfully. Parents as a team provided for all needs of their children, such as, Physical, Educational, Psychological, and in many instances, Religious, Moral, and Spiritual. It becomes obligatory for children to show the utmost Kindness, Respect, and Obedience to their Parents. ALLAH mentions that human beings must recognize their parents and that this is second only to the recognition of ALLAH Himself. In Holy Quran ALLAH ALMIGHTY beautifully explained:

"And your Lord has decreed that you not worship except Him, and to parents, good treatment. Whether one or both of them reach old age [while] with you, say not to them [so much as] 'uff' [i.e., an expression of irritation or disapproval] and do not repel them but speak to them a noble word. And lower to them the wing of humility out of mercy and say: 'My Lord! Have mercy upon them as they brought me up [when I was] small.'" (Quran 17:23-24.

There are some traditions (Hadith) of Prophet Muhammad (SAW) about treatment with parents in the best way are mentioned below:

"If someone is rude and disrespectful towards his parents, hurt them by saying insulting remarks or cause them grief or misery in any manner, then he shall find his place in Hell".

Once, someone asked the Holy Prophet (SAW): "What right does parents have over their children?" He answered: "They are your heaven and hell." (Ibn Majah)

The duties of children towards their parents extend even after their death. One of the best ways to honor the parents when they are gone is by being kind to their friends. Holy Prophet (SAW) said about it:

"The best act of righteousness is that a man should maintain good relations with his father's loved ones." (Sahih Muslim).

In another Hadith Holy Prophet (SAW) said: "No child can compensate his father unless he finds him as a slave, buys him, and sets him free." (Sahih Muslim). The Prophet (SAW) placed kindness and respect towards parents just after the prayer offered on time as the prayer is the base of Islam. 'Abdullah Ibn Masood, said:

"I asked the Prophet (SAW) which deed is most liked by Allah. He said: 'Prayer offered on time.'I asked him: 'Then what? He (SAW) said: 'Kindness and respect towards parents.'…" (AlBukhari)

**Yasir Iqbal vs The State etc**

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Cr-A-No-794-P-of-2020.pdf

Cr. A. No. 794-P/2020.

**Circumstances, where sentence awarded u/s/302(b) PPC can be converted into section 302(c) PPC. Principle laid down.**

**LAL JAN KHATTAK J.-**

This appeal is directed against the judgment dated 0210.2020 of the learned Additional Sessions Judge / Judge Model Criminal Trial Court, Peshawar, delivered in case FIR No. 1611 dated 01.11.2016 under section 302 PPC of police station Chamkani, Peshawar, whereby the appellant has been convicted under section 302 (b) PPC and sentenced to suffer imprisonment for life with fine of Rs. 400,000(four lac) or in default whereof to further undergo six months Sl. Benefit u/s 382-B Cr.P.C. has been extended to him.

8. However, the moot question for determination before this court is that whether the appellant's case falls under section 302 (b) PPC as has been held by the learned trial Court or same comes within the purview of section 302(c) PPC. Record shows that the appellant had no enmity with the deceased or any of his family members. According to the record, the appellant and the deceased met each other by chance in the Chitral bound flying coach and seated on rear seat of the vehicle close to one and other when all of a sudden the unfortunate occurrence took place without any premeditation. Though the learned defense counsel did not endeavor to bring the appellant's case within the parameter of section 302 (c) PPC as no suggestion of any kind was given to the prosecution witnesses that the appellant had resorted to take the extreme step of taking the deceased life under sudden and grave provocation or under the heat of passion nor the appellant himself took such plea in his statement recorded under section 342 Cr.PC but in order to know about the root cause of the incident and to do complete justice we perused the police file by taking it from the learned Addl. AG and found therein the appellant's statement recorded under section 161 Cr.PC. According to the appellant's ibid statement he was seated in the vehicle on its rear seat with the deceased and shortly after covering some distance he requested the deceased who was seated against the window seat to slide the window pane so that fresh air could come as he i.e. the appellant was not feeling well and was about to vomit which request was turned down by the deceased by uttering in "Pashto" on which hot words were exchanged between the two whereupon the appellant took out a knife and pushed it into the deceased body as a result he received injuries with which subsequently he died. It is worth to mention that the learned Addl. AG and learned counsel for the complainant did not dispute the version given by the appellant in his 161 CrPc statement.

9. In the situation mentioned above, we are of the considered view that the appellant has committed the offence under the heat of passion and without any premeditation and it is well settled that where some offence is committed without any premeditation and in the heat of passion and at the spur of moment then in such like situation, the courts of law normally award minimum sentence to the accused than the normal one by bring his case under section 302 (c) PPC.

10. Learned counsel for the complainant vehemently argued that as the appellant had acted harshly by inflicting two successive serious injuries to the deceased on vital parts of his body, therefore, his case does not fall under section 302 (c) PPC. We are not in agreement with what learned counsel for the complainant has submitted at the bar to the ibid effect because when under the heat of passion some act is done then its magnitude cannot be weighed in golden scale as it is not expected from a mentally disturbed person to main certain limits while committing a crime with disturbed mind.

11. Request of the appellant from the deceased to slide the window-pane as by then he was not feeling well and the latter's obstinacy in this respect caused stirs in the former's disturbed mind which though in the ordinary course of event cannot be made a ground to downgrade the murder but it is settled that each criminal case is decided on its own

facts and circumstances. There is no material on the record that just before the occurrence what else had happened than what is disclosed by the appellant in his 161 Cr.PC statement. Whether it was mere refusal of the deceased to slide the window pane or he had uttered something else towards the appellant shrouds in mystery which aspect of the case coupled with the fact that both the parties were not known to each other before the occurrence and that the exceeded action of the appellant was neither pre-meditated one nor it was done with any pre-existing mind can be considered to hold that the murder committed by the appellant squarely falls within the ambit of section 302 (c) PPC instead of section 302 (b) PPC and it is held so by us.

12. After holding that the murder committed by the appellant comes within the parameter of section 302 (c) PPC the next question would be about the period of imprisonment to be awarded to him. In our considered opinion, the ends of justice would meet if a sentence of 10 years imprisonment is awarded to him keeping in view of the circumstances of the case.

13. For what has been discussed above, we partially allow this appeal, modify the impugned judgment of the learned trial Court and consequently conviction of the appellant is converted from section 302 (b) PPC to section 302 (c) PPC and his sentence is reduced to ten years(10) rigorous imprisonment with benefit u/s 382-B Cr.PC, however, he shall pay the fine of Rs. 400,000 as compensation to legal heirs of the deceased and in default whereof shall suffer six months Sl.

**Peshawar High Court Bar Association Vs The State**

**https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-2206--2022-.pdf**

Writ Petition No. 2206-P/2022.

**FIR can be quashed if from the bare reading of its contents, a cognizable offence is not made out.**

**Musarrat Hillai, J:**

5. Under the Code of Criminal Procedure, 1898, "Cr.P.C", there are two types of offences, i.e., cognizable and non-cognizable. The word "cognizable offence" has been defined in section Cr.P.C which means a case in which a police officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant, while the term "non-cognizable offence" has been defined under section 4(n) Cr.P.C which means a case in which a police officer may not arrest without warrant. In a case of "cognizable offence", under the provisions of section 154 Cr.P.C, every information, if given oral to an officer in charge of a police station, shall be reduced into writing by him or under his direction, and be read over to the informant, and every such information whether given in writing or reduced into writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf, which is called as the first information report "FIR" and if the information is relating to the "non-cognizable offence", under section 155 (l) Cr.P.C, such information shall be entered in a book, known as 'Roznamcha' or "Daily Diary" and shall be referred to Magistrate.

6. There is key difference between the two terms, i.e, "cognizable" and "non-cognizable offences". In the former case, under section 156(2) Cr. P.C, police have the powers to investigate the case without formal permission of the Magistrate and can arrest accused without warrant, while in the latter case, such authority is not vested with police officer under sub-section (2) of section 155 Cr.P.C. If a police officer in the latter case arrest any person or investigate the case without permission of the court, such course will not only be in violation of the mandatory provisions of sub-section (2) of Section 155 Cr.P.C but also he will expose himself for penal consequences or prosecution under section 220 PPC.

7. In the instant case, as per contents of the FIR, the mob was neither armed with deadly

weapons nor caused injury to any person nor extended any threat to cause death or grievous hurt, therefore, the allegations made in the FIR, on the face of it, do not constitute cognizable offences, hence, lodging of the FIR in non-cognizable offences is in utter violations of the provisions of the criminal procedure Code and now it has been well settled that FIR can be quashed if from the bare reading of its contents, a cognizable offence is not made out.

8. For what has been discussed above, the instant petition as well as the connected writ petition No. 2207-P/2022 is allowed, resultantly, the impugned FIR is quashed.

**Yasir khan etc Versus The State etc.**

**https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Cr-R-No-62-P-of-2022.pdf**

Cr.R No. 62-P/2022

**Whether compromise effected at bail stage can be considered for acquittal of accused at trial or otherwise**

**ISHTIAQ IBRAHIM, J.-**

Through the instant Criminal Revision, the petitioners have challenged the order dated 03.03.2022 rendered by learned Addl: Sessions Judge-XII, Peshawar, whereby the application of the petitioners for their acquittal u/s 265-K Cr.P.C, on the basis of compromise was turned down.

7. The question as to whether compromise effected at bail stage can be considered for acquittal of accused at trial or otherwise, is the main controversy involved in this case which needs to be addressed by this Court. While deciding the case titled "Syed Iftikhar Hussain Shah Vs. Sved Sabir Hussain Shah and 2 others" (1998 SCMR 466) the august Supreme Court refused leave to appeal against the judgment of High Court whereby the trial Court had been directed to acquit the accused on the basis of compromise arrived at between the parties at the time of pre-arrest bail. Observations of the Hon 'ble apex Court in the above referred judgment are reproduced below.

"It may be true that while accepting revision application, the learned Judge in Chambers should have directed the learned Sessions Judge to dispose of the case in accordance with law but it is submitted before us that the learned Sessions Judge has already acquitted the accused in the case which has not been challenged by the petitioner. Be that as it may, after reading the statement of the petitioner recorded by the learned Additional Sessions Judge while disposing of the pre-arrest bail application of respondents, we are in no doubt that a sum of Rs. 4,000/- was received by the petitioner as compensation for settlement of the case as as such it is not a fit case in which leave should be granted. The order of the learned Judge in chamber is a just and proper order in the circumstances of the case and no case is made out for interference with this order. Petition is, accordingly, dismissed and leave to appeal is refused".

The principle underlying in the above observations of the Hon'ble apex Court, so far this Court gathers, is that once compromise effected at bail stage can be considered for acquittal of accused during trial.

This view was distinguished by the apex Court in a subsequent judgment in the case of "Muhammad Akram Vs. Abdul Wahab and 03 others " (2005 SCMR 1342) wherein leave to appeal was refused against the order of Lahore High Court Multan Bench. It would be appropriate to reproduce the observations of High Court which were confirmed by the Hon 'ble apex Court.

(3) I have heard the learned counsel for the petitioner at length, also have gone through the impugned order as also the contents of this petition. Under subsection (2) of section 345, Cr.P.C. the offences mentioned in the first two columns given in the said section may, with the permission of the Court before whom any prosecution for such offence is pending, be compounded by the persons mentioned in the third column given thereunder. It is an admitted position that compromises were effected during the pendency of petition for bail before arrest, when the prosecution of the offences was not pending before the learned trial Court. Such

a compromise cannot be made basis for acquittal of the petitioner as under section 345(2), Cr.P.C. it is the trial Court which has to satisfy itself and grant permission to compound the offence being tried by it. I find no illegality or jurisdictional error in the impugned orders and maintain the same. The case-law cited by the learned counsel for the petitioner is not applicable to the facts and circumstances of this case."

The august Supreme Court in the case of Muhammad Akram supra while deciding the CPLA against the above order of the Lahore High Court, observed that:

"5. We have considered the contentions of the learned counsel for the petitioner and carefully scanned the record available. Admittedly the petitioner was granted bail solely on the ground that the complainant party including injured filed affidavits in favour of the petitioner; that he may be released on bail. Subsequently, after completion of the investigation, police submitted charge-sheet against him before the trial Court where the case is pending for trial. The trial Court and the learned High Court rightly rejected the application of the petitioner".

According to the principle laid down in the above referred judgment, compromise effected at bail stage cannot be considered during trial of the accused.

In a recent judgment rendered by the august Supreme Court in the case titled "Tariq Mehmood Vs. Naseer Ahmad and others " (PLD 2016 Supreme Court 347), two categories of cases mentioned in sub-section (l) and sub-section (2) of section 345, Cr.P.C were discussed and it was held that compromise effected in the cases categorized under sub-section (l) of Section 345, Cr.P.C take effect from the moment it is effected by the parties and none of them can resile from it at subsequent stage of the case while compromise at bail stage in the cases falling under sub-section (2) of section 345, Cr.P.C could not be taken effect to at the stage of trial if the complainant party resiles from the compromise. The principles laid down by the apexCourt in this regard are as under: -

"Subsection (1) of Section 345, Cr.P.C enlists the offences which may be compounded by the specified persons without any intervention of any Court and in some of the above mentioned precedent cases it had been clarified that compounding in such cases takes effect from the moment the compromise is completely entered into by the parties, the relevant Court which is to try the offence in issue is left with no jurisdiction to refuse to give effect to such a compromise and a party to such a compromise cannot resile from the compromise at any subsequent stage of the case. On the other hand, subsection (2) of section 345, Cr.P.C deals with cases in which the offences specified therein can be compounded only with the permission of the Court and in all such cases any compromise arrived at between the parties on their own at any stage is not to take effect at all unless the Court permits such compromise to be given effect to and the relevant Court for the purpose is the Court before which prosecution for the relevant offence is pending".

In the present case the petitioners are charged under Section 506 PPC r/w section 3/4 Ghag Act/25 Tel Act. Sections 3/4 Ghag Act / 25 Tel Act are not compoundable while section 506 PPC though compoundable but cannot be compounded without intervention of the trial Court. The compromise in this case was arrived at between the parties before the Court which was seized of the pre-arrest bail of the accused/petitioners and was undoubtedly not the trial Court. For convenience section 345(1) is reproduced as under: -

**S.345. Compounding of offences**. (1) The offences punishable under the sections of the Pakistan Penal Code (XLV of 1860) [specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table.

.10. From the bare reading of above provision of law, it is clear that offences mentioned in the table which is part of this sub section can be compounded at any stage and the compromise shall be effective for subsequent proceedings. Section 345 (2) Cr.P.C

provides mechanism for the compounding of offences but with the permission of the trial Court.

For convenience section 345 (2) Cr.P.C is reproduced as under:

(2) [Subject to sub-section (7), the offences punishable under the sections of the Pakistan Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table.

In case of Tariq Mehmood Vs Naseer Ahmad and others Supra the Hon'ble Apex Court has already laid to rest this question and in unequivocal terms has held that offences coming under the purview of section 345 (l) Cr.P.C if once compounded then that compromise for all practical purposes shall be considered in the subsequent proceedings. While the offences mentioned in section 345(2) Cr.P.C can only be compounded with the permission of the trial court, therefore, a full fledge mechanism has been laid down in section 345 of the Cr.P.C for the composition of the offences, submission of the learned counsel that in all cases once compromise is effected, the same shall be considered for the acquittal of the accused during subsequent proceedings is misconceived being against the mandate of law as well as the dictum laid down by the Hon'ble Apex Court in the above referred judgments.

.11. In the present case as already observed two of the sections are non-compoundable while section 506 PPC as per table which is part of 345 (l) Cr.P.C is compoundable only when the offence is not punishable with imprisonment for seven years, in other words when the offence under section 506 PPC comes under the part-I of the ibid section than the provision of section 345(1) Cr.P.C will come into play, otherwise if it is covered by para-2 of section 506 PPC then permission of the trial court is necessary and without permission of the trial court, compromise at bail stage shall not be considered in the subsequent proceedings. Furthermore, perusal of compromise deed as well as statement of the complainant recorded before the learned trial would reveal that the complainant had compromised the matter with the petitioners only to the extent of confirmation of pre-arrest bail of the petitioners and there is no mention with regard to the acquittal of the petitioners at trial stage.

12. In light of the above discussion, this Court arrives at the conclusion that petitioners/accused cannot be acquitted on the basis of compromise effected by the complainant at bail stage in view of the principles laid down in the ibid judgment of the august Supreme Court lastly mentioned as the compromise had been effected at bail stage which was not effective at the stage of trial. The impugned order is not suffering from any illegality or irregularity which does not warrant interference by this court. Resultantly, this Criminal revision is dismissed.

**Farman Hussain Vs The State.**

**https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Farman-Hussain-BA-2177-22--489-F-420-PPC-dismissed.pdf**

Cr.MBA No.2177-P/2022.

**The concession of grant of bail cannot be exercised in a way which is arbitrary, fanciful or perverse.**

**MOHAMMAD IBRAHIM KHAN, J: -**

After being enmeshed in case FIR No.163 dated 03.03.2022, registered under Sections 489-F/420 PPC, at Police Station MRS, Kohat, petitioner Farman Hussain is looking for his post arrest bail.

6. This Court is well aware of dishonoring of the cheques which even if become part of prosecution evidence and bring home the charges would entail punishment to the maximum 3 years or with fine or with both but it is also to be taken into consideration that when there is an exception for refusal of bail even for the offence where grant of bail is a rule, bail may be and can be refused. Moreover, the apex Court has repeatedly held that the mere fact that an offence does not fall within the prohibitory clause of section 497(1) Cr.PC, would not mean that such an offence had become a bailable offence. The discretion still remains with

the competent Court to consider whether a person accused of such an offence does or does not deserve the grant of bail in accordance with the established norms governing the exercise of such a power. "Afzaal Ahmed vs The State" (2003 SCMR 573), "Muhammad Afzal vs The State" (1997 SCMR 278) & "Imtiaz Ahmed vs The State" (PLD 1997SC 545). It is not a rule of universal application. Each case has to be seen through its own fact and circumstances and the concession of grant of bail cannot be exercised in a way which can be termed as arbitrary, fanciful or perverse. No malafide or ulterior motive has been attributed on the part of complainant to falsely implicate the petitioner in the case. Before his dismissal from service, petitioner was serving as Director, Finance, Garrison Cadet College, Kohat, who has robbed the said college by committing criminal breach of trust. He was entrusted with the fees of the students and other finances, which were earned by their parents through hard means. He was having complete dominion over the said money. Tentatively by filing his affidavit and executing an agreement with the college administration of his own sweet will, provided cheques of different nominations for its payment on different dates, the very first cheque being dishonored due to insufficient fund, which are in detail mentioned in the agreement deed dated 12.09.2020, would certainly be a big blow to his enlargement on bail which will serve as an exception and would lean the Court to dismiss this bail application.

7. In view of above, this bail petition is dismissed, however, the petitioner is facilitated for an early outcome of the trial of this case by filing challan before the competent Court where the trial be held expeditiously. It is too left entirely to the Investigation Officer of this case/ District Public Prosecutor concerned to levy Section 408 PPC, as an added section in the First Information Report followed by submission of the challan under the same section of law and also to the learned Court vested with the trial to charge the accused (Farman Hussain) accordingly while framing of the charge.

**Fazal Raziq vs. The Government of Pakistan through Secretary Establishment Division, Islamabad etc.**

**https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-No-3771-P-2021.pdf**

W.P. No.3771-P/2021 .

**The ultimate authority, whose observations are conveyed to the civil servant in the matter of adverse entries, is the Countersigning Officer.**

**IJAZ ANWAR J: -**

7. It is by now well settled that the ultimate authority, whose observations are conveyed to the civil servant in the matter of adverse entries, is the Countersigning Officer, thus, while going through the contents of the ACR Proforma, we find that the remarks for the years 2016 and 2017 were recorded merely as 'average' and even the remarks of the Reporting Officer as 'unfit for promotion' were not agreed to by the Countersigning Officer; besides, admittedly, the said remarks were never conveyed to the petitioner. In terms of the ACRs Instructions, 'average ACR', under no circumstances, can be considered as 'adverse' unless the same are conveyed as adverse. Reference can be made to the cases titled "Pakistan Broadcasting Corporation D.G.H.O Vs. Nasiruddin (1997SCMR 1303), Province of the Puniab Vs. Noor Ilahi Khan Leghari (1992 SCMR 1427). Muhammad Zavauddin vs. Deputy Collector (Locust). Department of Plant Protection, Sukkur (1995 PLC (C.S) 373)".

It, thus, appears that the case of the petitioner was not properly considered by the Selection Committee, wherein, it was observed that "his PERs for the last two years reflect that he is unfit for promotion ", because, the record speaks otherwise and as stated above, the remarks, recorded by the Countersigning Officer, are to be given weight and the entries pertaining to 'unfit for promotion' given by the Reporting Officer, lost its efficacy.

Though, there is observation regarding eligibility of the petitioner for promotion allegedly on the ground that he cannot be considered either

for the posts of Reproduction Supervisor, Protocol Officer or the Assistant Director on the ground that he has got no relevant experience. It has been admitted by the respondents that the petitioner, ever since his appointment as Stenographer (BPS-15) in the year, 1985 and then his move-over to BPS16, remained in that capacity till the year, 2007 when he was subsequently re-designated and adjusted as Caretaker Hostel (BPS-16), albeit, the case of the petitioner was a case of hardship as ever since his appointment, he throughout remained in the same pay scale while serving for more than 37 years. Similarly, promotion cannot be withheld on the basis of earning average ACR. Reference can be made to the cases titled "Pakistan Broadcasting Corporation Vs Vasiruddin (1997 PLC (C.S) 931). Muhammad Anwar vs.Secretary, Establishment Division (1992 PLD SC 144) and Muhammad Sadiq Vs. Post Master, Central Puniab, Lahore and others (2007 PLC (C.S) 511) and 2000 T.D. (Service) 374".

In view of the above, we find that the case of the petitioner for promotion has not been dealt with even handedly, because, the moment this Court directed the respondents vide order dated 23.10.2018 for decision of his departmental representation, average ACRs were recorded on 07.11.2018 for the years 2016 and 2017 which are even against the PERs Instructions which requires that finalization of such ACRs by Reporting Officer as 20th July and Countersigning Officer by 3 1 stJuly. While in the instant case, the ACRs were belatedly written which speaks volume about the treatment so meted out to the petitioner. Reference can be made to the reported judgments titled "..Chief Secretary. Government of Punjab, Lahore and others Vs. Muhammad Saeed Zafar and another (1999 SCMR 1587) and Ch. Saeed Ahmed Vs. Federation of Pakistan through Secretary. Finance Division, Islamabad and 02 others (1996SCMR 256)".

12. For the reasons stated above, this writ petition is partially allowed. The impugned orders are set-aside and the respondents are directed to place the case of the petitioner before the Selection Committee for consideration of proforma promotion in accordance with law within a period of two months positively.

**Muqadas Khan...Vs... The State & another**

**https://peshawarhighcourt.gov.pk/PHCCMS//judgments/cra.624.2022.0609.phc.pdf**

**Cr.Appeal No. 624-P/2022**

**Dissolution of Marriage on the basis of Khula, when both parties profess Fiqa Jafria: recitation of sigha in the presence of two witness and Offence Under section 4 of the Elimination of Custom of Ghag Act, 2013.**

**SHAKEEL AHMED J.**

In Mulla's Mahomedan Law, Baillie has been quoted as above, for Shia Law and it states that "A divorce must be pronounced orally in the presence of competent witnesses and a Talaq communicated in writing is not valid unless husband is incapable of pronouncing it orally.

Ameer Ali in his book on Mohammedan Law, Vol. II, page 444, writes that: -

"Under the Shia Law, it is further necessary that there should be two reliable witnesses present at the time of repudiation to hear the words in which it is pronounced, or in the case of a dumb individual, to see the writing or the signs in which 'H is expressed. Not only must the witnesses be present at the time, but they should understand the nature of the act and hear the distinct wording of the repudiation. If they be enable to testify to the exact character of the Talaq, or the words or signs used, it is invalid, although all other conditions may have been duly complied with.

It is a further condition under the Shiah doctrines that the witnesses should be present together. The Shia Law is so stric repudiation and throws so many obstacles in the way of a dissolution of marriage by this process, that it declares that, if one of the witnesses should be present at one stage and the other at another stage of the proceeding, the Talaq would not be valid. When they testify to the acknowledgment by the wife of a repudiation, it is not necessary that their testimony should be

concordant, or relate to one and the same time, or 'be given together'. Yet says the 5hara'a, 'if one should testify to the fact of repudiation and 801 the other to the Acknowledgment of it, their testimony would 1094 not be admissible'.

When a Talaq is pronounced in the presence of witnesses, it takes effect only when the appropriate words are employed. If a husband were to repudiate his wife first without witnesses and then in their presence, the former proceeding would count for nothing. roe dissolution would come into effect only from the date of ltte second Talaq if valid.11

In Al-Sharia, Vol.11 by S.C. Sir car, pp.399-400, it is stated that:

"Divorce cannot be effected in writing nor in any other language than the Arabic, when there is ability to pronounce the (Arabic) words especially appointed, nor by signs except where the party is enable to speak. So, -

If the husband is dumb, divorce may be effected by any signs indicative of his purpose.

Though divorce cannot be given in writing by one who is present and able to pronounce (the proper words), yet, being enable to speak, if he (the divorcer) writes them, thereby intending divorce, it is valid and effective.

Some Doctors are of opinion that divorce takes place by writing if the husband were absent from his wife, but this opinion is not to be relied upon.

K.N. Ahmed in his book, Muslim Law of Divorce, referring to Wasilat al-Najat, Abul Hasan al-Mustafa, Najaf, 1364 A.H., p-370, at page 33 writes as under: -

"Presence of two trustworthy male witnesses at the time of divorce is an essential condition under the Shia Law. They should be present together at that time. A Full Bench of the Lahore High Court has expressed the view that 'the rule regarding the presence of two witnesses is a rule of evidence which stands replaced by the Evidence Act. The Supreme Court of Pakistan did not approve of the view and stated in its judgment that 'the law, however, being laid down in categorical terms, it is open to question whether the view taken by the Appellate Bench can be sustained. It may be noted that the view expressed by the High Court requires reconsideration. The role regarding presence of witnesses is certainly not a role of evidence, but belongs to the substantive Shia Law of divorce and is an essential part of the same. Under the Shia Law, a divorce pronounced in the absence of witnesses shall be invalid. It is stated in Shari'ah al-Islam that the hearing of the pronouncement of divorce is as essential condition for the validity of the divorce. The Shia Law is so strict in the matter that it has laid down that in the absence of witnesses no divorce shall be effected even if all the other conditions are satisfied, nor shall a divorce be effected if only one witness be present or the two witnesses 'present are not just and reliable. The Shia jurists rely on their interpretation of the verse of Surah al-Talaq (LXV: 2) which enjoins the Presence (of two witnesses at the time of divorce.

Thus› the Shia law is more strict in the matter of divorce than the Sunni Law.

Saksena in his book on Muslim Law, p.113, states that:

"Under the Shia law› talaq in writing or by signs is not allowed, unless the husband is unable la pronounce the formula of divorce and unless the document is wrinen or the signs made with the intention of Talaq and in the presence of two male witnesses."

It has been further stated that:

"The Shias insist on the presence of two Muslim witnesses of approved probity at the pronouncement, which must be in R••per form and in Arabic terms› !I ROSSible, and there must be intention to dissolve the union."

In Jamilal-Jafri, Vol. 11, page 9. Lahore, (Urdu translation) it is stated as under: -

In "A Code of Muslim Personal Law," Volume I written by His lordship Mr. Justice Tanzil- ur-

Rehman, learned counsel relied on at page 338 which is as under:

”Shi’ah Law prescribes • Particular formula for the Pronouncement of divorce. If that is not obeyed, divorce would be ineffective. Thus, according to 5hi’ah Doctors, the Talaq must be orally pronounced by the husband, in the presence of two witnesses and the wife in a set form of Arabic words except where it is established that the husband is incapable of Pronouncing the talaq in the manner mentioned above. PLD 1963 SC 51› 1963(1) PSCR 356, IS DLR (SC) 9). It will be noticed that it is not with regard to proof of divorce that the Shiah law insists on two witnesses but to the very act of divorce and, therefore, the matter does not relate to proof only. It is a part of substantive law PLD 1962 (W.P.) Lah. 558; PLD 1965 Kar.185.

It is by now settled that in every criminal act (crime) has three stages, the first one is mens rea, the second stage is preparation and the third stage is the decisive step taken thereto i.e. completion of the criminal act, but above all intention/mens rea is the most essential part of a crime, therefore in every crime it is a matter of high importance that the intent and act must concur to constitute an offence. True that an intention may be inferred from the act of the accused person, but the manifestation must provide clear link therewith. There is no evidence on record whatsoever, to disclose that the appellant posed himself to be husband of Mst Inaz Begum with malafide intentions rather he was under belief that talaq has not taken place between the parties as as per shia law/Fiqah Jafria, till proper procedure was followed on 02.01.2021. It is the golden principle of criminal jurisprudence that an accused cannot be held guilty for a crime on the basis of probabilities, presumption, conjectures and summaries and that no one shall be construed into crime without concrete legal proof. In this context, reliance can well be placed on the judgments reported as State vs M. Idrees Ghauri (2008 SCMR 1118) and Federation of Pakistan Vs Hazoor Bukhsh and 2 others (PLD 1983 FSC 255).

In my view, the defense plea of the appellant is more plausible and convincing and he while acting in good faith claimed himself to be husband of Mst Inaz Begum till matrimonial tie between the parties was dissolved in accordance with Shia Law/Fiqa Jafria on 02.01.2021, is based on truth and that his act does not fall within the ambit of Section 4 of the Elimination of Ghag Act, 2013 and his conviction, and sentence under the said section of law is factually and legally not main tenable being not based on proper appreciation of evidence on record.

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