

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT: Mr. Justice Amir Hani Muslim
Mr. Justice Mushir Alam
Mr. Justice Mazhar Alam Khan Miankhel

C.R.Ps. 87 & 125/2015 in C.As. No.1366 & 718/07 and CMA No.7144/2015
(For review of the judgment dated 1.04.2015 passed by this Court in C.As. No.718 & 1366/07)

Ex-Lance Naik Mukarram Hussain (in CRP 87/15)
Ex-Gunner Muhammad Mushtaq (in CRP 125/15) Petitioners

Versus

Federal Government, M/o Defence
through Chief of Army Staff etc. (in CRP 87/15)

Secretary, M/o Defence
through Chief of the Army Staff (in CRP 125/15) Respondents

AND

C.M.A. No.6887/2015 in CRP No.452/2015 in C.P. No.276/2015

Ex-Hawaldar Iftikhar Hussain Applicant

Versus

Federation of Pakistan through
Secretary, M/o Defence Rawalpindi Cantt. Respondent

For the Applicant/Petitioner:

(in CMA 6887/15 & CRP 125/15): Col. (R) Muhammad Akram, ASC
Ch. Akhar Ali, AOR

(in CRP 87/15): Nemo

For the Respondents:

Mr. Sajid Ilyas Bhatti, DAG
Major Asad, JAG, G.H.Q.

Date of Hearing: 23.01.2017

JUDGMENT

Mazhar Alam Khan Miankhel, J.- The listed are two Civil Review Petitions i.e. C.R.Ps. No.87 & 125/2015 through which the petitioners seek review of the judgment of this Court dated 1.04.2015 and one Civil

Miscellaneous Application i.e. C.M.A. No.6887/2015 in C.R.P. No.452/2015 through which the applicant seeks permission to file additional documents pertaining to compromise with the legal heirs of the deceased. Though the main review petition of the applicant, above referred, was dismissed vide order dated 5.10.2015 but in his CMA following order was passed which for ready reference is reproduced below:-

“ The learned ASC contends that in identical circumstances, request for compromise between the petitioner and the legal heirs of the deceased has been entertained by the Court in Civil Review Petition No.125 of 2015 (RE Ex-gunner Muhammad Mushtaq v. Secretary Ministry of Defence) in terms of order dated 07.09.2015. Notice of this application be issued to the Attorney General for Pakistan as regards the maintainability of such application.”

Since similar questions of law and facts are involved, therefore, all the listed matters will have their fate through this single judgment.

2. The petitioners in both the review petitions as well as the applicant in CMA were tried, convicted and sentenced to death by the Field General Court Martial under the Pakistan Army Act, 1952 (in short the 'Army Act'). After exhausting remedies available under the Army Act, they questioned their convictions before the Lahore High Court, Rawalpindi Bench which were dismissed for want of jurisdiction under Article 199(3) of the Constitution. All the three convicts filed their petitions for leave to appeal before this Court. After grant of leave in Civil Petitions No.2149/05 and 336/06, filed by the petitioners, they filed Civil Appeals No.718 & 1366/2007 which were dismissed through a consolidated judgment dated 1.04.2015. Now they have filed the listed civil review petitions whereas the review petition of the applicant was dismissed vide order dated 5.10.2015 but through the same order notice was issued in his CMA No.6887/2015 to the Attorney General for Pakistan with regard to its maintainability.

3. Learned counsel for the applicant/petitioner submitted that in view of the compromise between the legal heirs of the deceased and the petitioner, the applicant/petitioner may be acquitted by accepting the said compromise. The main stance of the learned counsel was that in view of Section 1(2) Cr.P.C. provisions of Cr.P.C. are applicable to the case in hand, hence compromise under Section 345(2) Cr.P.C. can be accepted.

4. As against that the learned DAG while supporting the impugned judgment and giving strength to his arguments referred to Section 143 of the Army Act which provides pardons, remissions and suspension by the Federal Government or the Chief of Army Staff or any officer not below the rank of Brigadier empowered in this behalf by the Chief of Army Staff and as per the learned DAG, this Court cannot assume the jurisdiction in the matter in hand. Learned DAG in support of his arguments placed reliance on the cases of Javed Iqbal Vs. The S.H.O. and others (2013 P CrI.LJ 1394), Muhammad Rawab Vs. The State (2004 SCMR 1170) and Muhammad Sharif alias Baggu Vs. Home Secretary (1986 MLD 1767).

5. We have heard learned counsel for the parties and have also perused the available record. The learned counsel for the applicant/petitioner, in support of his arguments, referred to Section 1(2) Cr.P.C. Reproduction of the same would be beneficial here which reads as under:-

“Section 1. (1)

(2) **Extent.** It extends to the whole of Pakistan but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

To address the arguments of learned counsel for the applicant/petitioner, we would like to refer and reproduce the provisions of Section 5(2) Cr.P.C. which reads as under:-

Section 5. (1)

(2) **Trial of offences against other laws.** All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

A bare perusal of both the above provisions would make it clear that the provisions of Code of Criminal Procedure are not applicable to the matters governed by any Special or Local Law unless specifically provided in the said laws wholly or to any extent. If a person, who was proceeded against under a Special Law, he would be dealt with according to the procedure of enquiry/investigation and trial as laid down in the said Special Law. While reverting back to the case in hand, all the petitioners/applicant were dealt with in accordance with the provisions of the Army Act. The provisions of Section 143 of the Army Act would reveal that it is the Federal Government or the Chief of Army Staff or any officer not below the rank of Brigadier empowered in this behalf by the Chief of Army Staff who is empowered to grant such pardons, remissions and suspensions. In view of this very specific provision of the Army Act and being a Special Law, in our view, this Court cannot assume such jurisdiction and that too in its Review jurisdiction. The scope of Review provided under Article 188 of the Constitution of Islamic Republic of Pakistan, 1973 is very limited as such jurisdiction can only be exercised by this Court when there is an apparent error on the face of the record having bearing on the fate of the case. The question of jurisdiction to entertain C.P.L.A. or C.A. has already been dealt with by this Court while deciding the appeals of the present petitioners vide judgment dated 1.04.2015 and this issue has also been addressed in an un-reported judgment dated 22.04.2015 delivered in Civil Petition No.276/2015 titled Ex. Havildar Iftikhar Hussain Vs. Federation of Pakistan through Secretary M/o Defence, Rawalpindi

Cantt. This Court has time and again faced the question of jurisdiction relating to the orders or actions of the Armed Forces and it has been the firm view of this Court that there is no bar of jurisdiction if the same suffer from *mala fide*, jurisdictional error or *corum non judicce*. This Court in case of Ghulam Abbas Vs. Federation of Pakistan through Secretary Ministry of Defence (2014 SCMR 1530) has held that "any action or order of any authority relating to Armed Forces of Pakistan, which is either *corum non judice*, *mala fide* or without jurisdiction, the same could be challenged before the High Court and bar contained under Article 199(3) of the Constitution would cease to operate. In the case of Rana Muhammad Naveed Vs. Federation of Pakistan through Secretary M/o Defence (2013 SCMR 596) this Court was of the view that there is no prohibition on the High Court to make an order under Article 199(3) of the Constitution if acts, actions or proceedings suffered from defect of jurisdiction or *coram non judice*. Further in the case of Federal Government through M/o Defence, Rawalpindi Vs. Munir Ahmed Gill (2014 SCMR 1530) this Court has observed that if an action of the Army Authorities with regard to a serving officer of the Armed Forces or any other person subject to the Army Act is established to be either *mala fide*, *corum non judice* or without jurisdiction then the same could be assailed through a Constitution Petition by such aggrieved person and the bar of jurisdiction under Article 199(3) of the Constitution would have no applicability. Thus, we are very much clear that jurisdiction of this Court can only be justified against orders or actions of the Army Authorities if same are suffering from *mala fide*, jurisdictional error or thus *corum non judice* but in the case in hand all the elements lack their existence. Moreover, it has been the firm view of the Courts that provisions of the Cr.P.C. would not attract to a case involving an offence dealt with by the Field General Court Martial under the Army Act. More so, we have been apprised by the learned DAG that in view of pendency of these petitions, the JAG Branch of

the Army has already initiated the proceedings pertaining compromise in these cases with the concerned authorities and we have been informed that death sentences of the present petitioners have been converted to that of life imprisonment.

6. In view of what has been discussed above, all the listed matters are dismissed being meritless. We are also unable to understand that when the main review petition of the applicant was dismissed how a miscellaneous application can be considered in that matter. So, for this reason too, CMA No.6887/2015 is liable to be dismissed.

The above are the reasons for our short order of even date which reads as under:-

“ For reasons to be recorded later, these Review Petitions alongwith Civil Misc. Application, are dismissed.”

Judge

Judge

Judge

ISLAMABAD
23rd January, 2017
APPROVED FOR REPORTING
(Nasir Khan)