

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MUSHIR ALAM  
MR. JUSTICE YAHYA AFRIDI  
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

**Civil Petition No.1125 of 2018**

*(Against the judgment dated 26.01.2018 passed by the Lahore High Court Rawalpindi Bench Rawalpindi in W.P. No.2271/2012)*

***Ex- PA 43620 Lt. Asim Bashir***

*...Petitioner(s)*

***Versus***

***Federation of Pakistan & 3 others***

*...Respondent(s)*

For the Petitioner(s):

Mr. S.A. Mahmood Khan Saddozai,  
ASC  
Ms. Rubina Mahmood Khan  
Saddozai, ASC  
Ch. Akhtar Ali, AOR

For the Respondent(s):

Mr. Sajid Ilyas Bhatti,  
Addl. Attorney General for Pakistan  
Major Haider and Major Azmat, JAG  
Branch.

Date of hearing:

06.05.2021

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Gasping for life with a fire shot in the head, Naveeda Gohar, 24/25, was escorted by Asim Bashir, her second cousin, a lieutenant in the Pakistan Army, petitioner herein, to Combined Military Hospital on 4.2.2010; incident was reported to the police by her husband Major Syed Afaq Ahmed (PW-8) wherein he alongside the petitioner named his mother as suspects; the injured breathed her last on 23.2.2010. D.N.A. (deoxyribonucleic) profile generated through deceased's vaginal swabs were found compatible with petitioner's specimens to conclusively confirm the carnal liaison.

Refusal of proposal by the petitioner, prior to deceased's marriage with the complainant, was cited as motive for the crime; he was taken into custody by the Army authorities same day. Presented before a Field General Court Martial convened at Bahawalpur Cantonment, the petitioner was indicted for homicide and fornication, initially let off on the former charge, however,

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returned a guilty verdict on the latter with a sentence of rigorous imprisonment for 3-years 6-months as well as payment of Rs.10,000/- as fine, accompanied by concomitant dismissal from the service vide decision dated 14.06.2011, a finding reverted for reconsideration by the Convening Authority/General Officer Commanding vide order dated 13.08.2011, in consequence whereof, after revisiting the evidence, comprising ocular account, admission and forensic report, he was convicted for homicide as well and sentenced to imprisonment for life vide decision dated 01.09.2011, affirmed by the General Officer Commanding as well as the Chief of Army Staff; his appeal, filed under section 133B of the Pakistan Army Act, 1952 (**the Act**) was dismissed on 10.2.2012; a Constitution petition also failed before a learned Judge-in-Chamber of the Lahore High Court at Rawalpindi Bench on 19.10.2017, leave to appeal wherefrom is being prayed for. Petitioner's mother was prosecuted for abetting the crime in regular jurisdiction before a learned Additional Sessions Judge Rawalpindi; she was acquitted without challenge vide judgment dated 9.5.2012.

2. Learned counsel for the petitioner contends that the petitioner, notwithstanding the accusation was not subject to the provisions of the Act in view of Section 59(2) thereof; that Field General Court Martial was not convened at the proper venue as contemplated by section 93 of the Act *ibid* as the petitioner had since been transferred to another station and, thus, the entire exercise was a nullity in the eye of law; that the offence was of a civil nature, a position confirmed by separate trial of petitioner's mother, namely, Nigar in regular jurisdiction; that a Convening Officer could not have remitted the case for reconsideration of the evidence and, thus, the entire exercise suffered from the taints of *mala fide* and being *coram non iudice* was liable to be set aside, concluded the learned counsel. The learned Additional Attorney General by referring to various provisions of the Army Act argued that the petitioner was convicted and sentenced on the strength of admissible evidence in compliance with the procedure permissible by law and, thus, there was no occasion calling for interference with a conclusion drawn by the High Court.

3. Heard. Record perused.

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4. On the eventful day, the petitioner was serving as a lieutenant in the Pakistan Army; though the incident occurred in a civilian neighbourhood, he was apprehended by the Military Police on the fateful day and a case for murderous assault was registered on the basis of information laid by victim's husband, himself a serving Major in the Pakistan Army; the petitioner conspicuously figured as the prime suspect therein. Given his status as an Army Officer, his apprehension, custody and prosecution before a Field General Court Martial are the steps taken within the remit of Section 549 of the Code of Criminal Procedure, 1898 (**the Code**) which unambiguously authorizes such a prosecution on the option of Commanding Officer, a choice that is in line with the concurrent jurisdiction of Court Martial and Criminal Courts on the discretion of "*Prescribed Officer*" as contemplated by sections 94 and 95 of the Act *ibid*, laying down the procedure in such an eventuality, therefore, the argument that the petitioner was not liable to be treated as subject to the Act in view of the nature and venue of the crime is entirely beside the mark. We are also not impressed by the contention that the petitioner ought not to have been tried in Bahawalpur Cantonment and that proceedings of Field General Court Martial stood vitiated on this score alone. On the contrary, in view of the options available to the Army authorities under section 93 of the Act *ibid* to convene Field General Court Martial "*in any place*", we are not inclined to take exception to the convenience of choice exercised by the authorities. The learned counsel has not been able to point out any prejudice suffered by the petitioner by his trial at Bahawalpur where, according to the record, he was afforded sufficient and fullest opportunity to meet the witnesses half way without let or hindrance.

Statutory scheme, regulating proceedings of Court Martial does not attach finality with any finding or sentence recorded thereunder unless confirmed within the contemplation of section 119 of the Act *ibid* by the competent authority; a combined reading of various provisions relating thereto under Chapter X of the Act *ibid* validly space the possibility of revision of a finding by the officer higher in hierarchy. In the present case, General Officer Commanding while taking stock of the evidence directed reassessment thereof by the president and members of Field

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General Court Martial, an exercise envisaged by the Act, undertaken in continuation of an ongoing process. The final sentence/finding is cumulative impact leading to the logical end of the proceedings within the integrity of the procedure regulating trial under the Act. Acquittal of petitioner's mother tried for abetment of the crime by a learned Additional Sessions Judge in regular jurisdiction does not adversely affect petitioner's prosecution, assigned a vastly distinguishable role of fatal shot to the deceased as unanimously alleged by the witnesses in the suggested backdrop, forensically confirmed.

5. The parameters authoritatively settled by this Court to examine the *vires* of a finding/sentence recorded by a Court Martial provide a limited space to examine hypothesis of any *mala fide* lurking behind the prosecution or any juridical flaw in holding of the Court Martial that may be viewed as *coram non iudice* or without jurisdiction and in so doing a High Court shall not attempt to search for a contra view of evidence, competently recorded during a Court Martial. See *Ex-Capt. Muhammad Akram Khan Vs. Islamic Republic of Pakistan through the Secretary to the Government of Pakistan, Ministry of Law and Parliamentary Affairs, Islamabad and another* (PLD 1969 SC 174), *The State Vs. Zia-ur-Rehman and others* (PLD 1973 SC 49), *Brig. (Rtd.) F.B. Ali and another Vs. The State* (PLD 1975 S.C. 506), *Sh. Karamat Ali Vs. The State* (PLD 1976 SC 476), *Federation of Pakistan Vs. Malik Ghulam Mustafa Khar* (PLD 1989 S.C. 26), *Secretary Ministry of Religious Affairs and Minorities and others Vs. Syed Abdul Majid* (1993 SCMR 1171), *Mrs. Naheeed Maqsood Vs. Federation of Pakistan through Secretary, Ministry of Interior, Govt. of Pakistan Islamabad and 4 others* (1999 SCMR 2078), *Ex-Lt. Col. Anwar Aziz Vs. Federation of Pakistan through Ministry of Defence Rawalpindi and others* (PLD 2001 SC 549), *Mst. Tahira Almas and another Vs. Islamic Republic of Pakistan through Secretary, Ministry of Interior, Islamabad and another* (PLD 2002 SC 830), *Mushtaq Ahmed and others Vs. Secretary Ministry of Defence through Chief of Air and Army Staff and others* (PLD 2007 S.C. 405), *Federation of Pakistan and others Vs. Raja Muhammad Ishaque Qamar and another* (PLD 2007 S.C. 498), *Ghulam Abbas Niazi Vs. Federation of Pakistan and others* (PLD 2009 S.C. 866), *Federation of Pakistan through*

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Secretary Defence and others Vs. Abdul Basit (2012 SCMR 1229), Rana Muhammad Naveed and another Vs. Federation of Pakistan through Secretary M/o Defence ( 2013 SCMR 596), Ghulam Abbas Vs. Federation of Pakistan through Secretary, Ministry of Defence and others (2014 SCMR 849), District Bar Association Rawalpindi and others Vs. Federation of Pakistan and others (PLD 2015 S.C 401), Ex-Lance Naik Mukarram Hussain and others Vs. Federal Government , M/o Defence through Chief of the Army Staff and others (2017 SCMR 580), Ex-Gunner Muhammad Mushtaq and another Vs. Secretary Ministry of Defence through Chief of Army Staff and others ( 2015 SCMR 1071) and Said Zaman Khan and others Vs. Federation of Pakistan (2017 SCMR 1249).

Official acts, protected by statutory presumption, of being *intra vires* cannot be readily branded as being actuated by considerations, tainted with *mala fide*, as exercise of jurisdiction by the functionaries of the Republic, vested in them by law, to accomplish a statutory purpose; these deserve full faith and credit. Contra allegations must qualify falsification test on the strength of material capable of objective verification; a bald accusation merits no consideration. The officers who carried out the exercise do not appear to have an axe to grind and conclusions drawn by them are irresistibly based upon the preponderance of evidence; they by virtue of their ranks validly constituted the Field General Court Martial as well as positions superior thereto and, thus, allegation of *coram non judice* is nothing than a far cry in circumstances. View taken by the learned Judge-in-Chamber being in accord with the law declared by this Court in the supra cases, calls for no interference. Petition fails. Leave declined.

**Judge**

**Judge**

**Judge**

Islamabad  
6<sup>th</sup> May, 2021  
Not approved for Reporting  
Azmat/\*