

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

**Larger Bench - I:**

Justice Qazi Faez Isa, CJ  
Justice Syed Mansoor Ali Shah  
Justice Amin-ud-Din Khan  
Justice Athar Minallah

1. **Civil Petition No. 3797 of 2020**

*[Against the judgment of the Lahore High Court, Lahore, dated 13.01.2020, passed in Writ Petition No. 71713/2019]*

Taufiq Asif.

... Petitioner

Versus

General (Retd.) Pervez Musharraf and others.

... Respondents

AND

2. **Civil Petition No. 3798 of 2020**

*[Against the judgment of the Lahore High Court, Lahore, dated 13.01.2020, passed in Writ Petition No. 71713/2019]*

Pakistan Bar Council through its Vice-Chairman.

... Petitioner

Versus

General (Retd.) Pervez Musharraf and others.

... Respondents

AND

3. **Civil Petition No. 3799 of 2020**

*[Against the judgment of the Lahore High Court, Lahore, dated 13.01.2020, passed in Writ Petition No. 71713/2019]*

Sindh High Court Bar Association through its President. ... Petitioner

Versus

Federation of Pakistan through Secretary,  
M/o Interior and others.

... Respondents

AND

4. **Civil Petition No. 3800 of 2020**

*[Against the judgment of the Lahore High Court, Lahore, dated 13.01.2020 passed in Writ Petition No. 71713/2019]*

Hafiz Abdul Rehman Ansari.

... Petitioner

Versus

General (Retd.) Pervez Musharraf and others.

... Respondents

For the Petitioner: (In CP. 3797/20)	Mr. Hamid Khan, Senior ASC. Mr. Taufiq Asif, ASC. Mr. Ajmal Ghaffar Toor, ASC.
For the Petitioner: (In CP. 3798/20)	Mr. Hassan Raza Pasha, ASC. (Chairman, Executive Committee, PBC) Mr. Haroon-ur-Rasheed, ASC. (Vice-Chairman, Executive Committee, PBC) Assisted by Mr. Wajih Hassan Pasha, Adv.
For the Petitioner: (In CP.3799/20)	Syed Rifaqat Hussain Shah, AOR.
For the Petitioner: (In CP. 3800/20)	Nemo.
For the Federation:	Ch. Aamir Rehman, Additional Attorney-General for Pakistan.
Assisted by:	Muhammad Hassan Ali, Law Clerk, Supreme Court of Pakistan
Dates of Hearing:	10 January 2024.

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**JUDGMENT**

**Syed Mansoor Ali Shah, J. –**

**Preface**

Judging is a cornerstone of the legal system, embodying the application of law to resolve disputes. Unlike monarchs who historically wielded absolute power, a judge operates within a framework of laws and principles that guide decision-making. Judges are not sovereigns with unfettered discretion but are guardians of the law, tasked with ensuring that justice is done according to established legal norms and principles. Their decisions must be guided by the law, precedents and the facts

before them, not by personal desires or objectives. A Judge, in the pursuit of justice, cannot embark on a self-imposed crusade of right and wrong. He 'is not to innovate at pleasure. He is not a knight errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by the system, and subordinated to the primordial necessity of order in the social life.'<sup>1</sup> This ensures that justice is administered fairly, consistently and predictably, thereby upholding the rule of law.

2. In the matter at hand, serious questions have been raised as to the discretionary and equitable exercise of writ jurisdiction by the High Court under Article 199 of the Constitution. These questions pertain not only to the lack of territorial jurisdiction vested in the High Court in the instant matter, but also to a purported exercise of this jurisdiction when none was available or warranted under the Constitution or the law and that too, in violation of the judgments and orders of the Supreme Court.

### Facts

3. The background facts of the case are that the respondent, General Pervez Musharraf ("**respondent**"), while acting as the Chief of Army Staff issued a Proclamation of Emergency Order, 2007 ("**PEO**") on 3 November 2007, imposing an emergency in the country and holding the Constitution in abeyance. He simultaneously issued a Provisional Constitutional Order, 2007 ("**PCO**") providing a governance mechanism during the said emergency, and the Oath of Office (Judges) Order, 2007 ("**Oath Order**") thereby removing and then replacing Judges of the superior courts. A 14-member Bench of this Court declared in *Sindh High Court Bar Association*,<sup>2</sup> the PEO, PCO and the Oath Order, and all actions taken pursuant thereto, to be unconstitutional and void *ab initio*. Review petitions filed against this judgment were also dismissed in *Nadeem Ahmed*.<sup>3</sup>

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<sup>1</sup> Benjamin N. Cardozo, The Nature of the Judicial Process 141 (Yale University Press, 1921).

<sup>2</sup> *Sindh High Court Bar Association v. Federation of Pakistan*, PLD 2009 SC 789.

<sup>3</sup> *Gen. (R.) Parvez Musharraf v. Nadeem Ahmed*, PLD 2014 SC 585.

4. After this Court's decision in *Sindh High Court Bar Association*, certain constitutional petitions were filed before this Court with the prayer that the Federal Government be directed to lodge a complaint under Article 6 of the Constitution against the respondent and others for the offence of high treason. These petitions were disposed of *vide* order dated 03.07.2013 in *Moulvi Iqbal Haider*<sup>4</sup> on the statement/undertaking of the learned Attorney-General to the effect that the Prime Minister had directed for the commencement of an inquiry and investigation in relation to the actions of the respondent taken on 03.11.2007, whereafter, if required, a complaint might be filed under Section 5 of the Criminal Law Amendment (Special Court) Act, 1976 ("**Special Court Act**") for the trial of the offence of high treason.

5. Pursuant to the result of that inquiry and investigation, a Special Court was constituted by the Federal Government *vide* notification dated 20.11.2013 for the trial of the offence of high treason under the High Treason (Punishment) Act, 1973 ("**High Treason Act**"). A complaint was filed by the Federal Government on 12.12.2013 against the respondent for the offence of high treason under Article 6 of the Constitution read with Section 3 of the High Treason Act and Section 5 of the Special Court Act. The trial of the respondent then commenced. During the trial, the Special Court passed an order for associating other persons as suspects with the respondent and ordered a fresh investigation during the ongoing trial. This order of the Special Court was then challenged up till this Court. *Vide* order dated 26.02.2016 passed in *Abdul Hameed Dogar*,<sup>5</sup> this Court set aside the said order of the Special Court on the ground that the Special Court had no power to associate any other person for investigation into the offence of high treason as the same was the prerogative of the Federal Government, and directed it to proceed with the trial of the respondent "with all convenient dispatch and without any unnecessary delay".

6. Meanwhile, a review petition was filed against the decision of this Court, dated 03.07.2013, in *Moulvi Iqbal Haider*. While deciding this review petition *vide* order dated 01.04.2019 in *Lahore High Court Bar*

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<sup>4</sup> *Moulvi Iqbal Haider v. Federation of Pakistan*, 2013 SCMR 1683.

<sup>5</sup> *Abdul Hameed Dogar v. Federal Government*, PLD 2016 SC 454.

*Association*,<sup>6</sup> this Court noted that the complaint was filed on 12.12.2013 before the Special Court, the charge was framed on 31.03.2014, the prosecution evidence was closed on 18.09.2014, and the trial was being delayed only because of the absence of the accused respondent who had been declared a proclaimed offender on 12.07.2016. Placing reliance on Section 9 of the Special Court Act, it was held that within the scope of the Special Court Act, if the accused voluntarily chooses not to exercise his right to appear and be present at trial, his trial in *absentia* does not infringe the fairness of the trial or violate the right to fair trial under Article 10A of the Constitution. It was held that by electing to be a fugitive of the law, the accused loses his right to audience. However, if he surrenders before the Court, his right to put up a defence stands restored. The Special Court was then directed to proceed with the trial provided that if the accused appeared, he would be entitled to record his statement under Section 342 of the Cr.P.C. and also lead any other defence under the law. However, if the accused failed to appear before the court and remained a proclaimed offender, the Special Court could proceed against him in his absence, under Section 9 of the Special Court Act.

7. The Special Court then proceeded with the trial and reserved its judgment *vide* order dated 19.11.2019. This order, whereby the Special Court reserved its judgment, was challenged by the respondent before the Lahore High Court, Lahore through a writ petition under Article 199 of the Constitution. While the matter was being heard by the High Court, the Special Court announced its judgment on 17.12.2019 convicting the respondent and sentencing him to death. However, the High Court ignored the judgment of the Special Court and decided the writ petition by allowing it through the impugned judgment dated 13.01.2020 ("**impugned judgment**"). The High Court, amongst other reliefs granted therein, held that the very basis of initiation of proceedings against the respondent for the offence of high treason was beyond the constitutional mandate, *ultra vires*, *coram non iudice* and unlawful. Hence, the instant petitions for leave to appeal.

#### Contentions of the Parties

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<sup>6</sup> Lahore High Court Bar Association v. General (Retd.) Pervez Musharraf, 2019 SCMR 1029.

8. The learned counsel for the petitioners, with the main thrust of the arguments presented by Mr. Hamid Khan, Senior ASC, contended that the Lahore High Court acted in derogation of the directions and judgments of this Court; the High Court had no territorial jurisdiction; the impugned judgment is in derogation of Section 12 of the Special Court Act, which provides for the jurisdiction of the Special Court and ousts the jurisdiction of any other Court with regards to matters seized by the Special Court; the writ petition was not maintainable as there was an adequate remedy available through an appeal before this Court under Section 12(3) of the Special Court Act, which was also availed of by the respondent; even otherwise, the impugned judgment was passed after the Special Court had announced its judgment convicting the respondent and therefore, the cause of action (if any) had ceased to exist; the reliance on *Mustafa Impex*<sup>7</sup> is misplaced as the principle settled therein has no retrospective applicability as held in *PMDC*<sup>8</sup>; and therefore, the impugned judgment is void *ab initio*, illegal, unconstitutional and *coram non iudice*. It was also contended that since the Lahore High Court had acted in complete derogation of the Constitution and the law, it was the duty of Bar Associations, Bar Councils and lawyers to ensure that the Constitution and the law are not violated and if such illegalities are committed, to bring the same to the notice of this Court so that the same can be rectified.

9. The learned Additional Attorney-General ("**AAG**"), representing the Federation and other official respondents, was asked about the stance of the said respondents regarding the impugned judgment. He stated that none of them supported the impugned judgment and contended that the impugned judgment was not legally sustainable. As to the respondent, this Court noted that he had passed away and, *vide* order dated 10.11.2023, allowed his legal heirs to come forward and join these cases if desired. However, none of the legal heirs appeared or appointed any counsel to represent them before this Court in these cases.

#### Opinion of the Court

10. We have heard the learned counsel for the petitioners and the learned AAG, and have perused the record with their able assistance.

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<sup>7</sup> *Mustafa Impex v. Government of Pakistan*, PLD 2016 SC 808.

<sup>8</sup> *PMDC v. Muhammad Fahad Malik*, 2018 SCMR 1956.

11. At the very outset, we may note that the matter relating to the trial of the respondent for the offence of high treason had earlier come before this Court on at least three occasions. On two of these occasions, this Court had specifically directed the Special Court to continue with the trial of the respondent. It had also been observed by this Court that there cannot be a graver offence than that of high treason and no proceeding is more solemn than a trial for the offence of high treason.<sup>9</sup> However, the Lahore High Court, in purported exercise of its writ jurisdiction under Article 199 of the Constitution, set aside the entire proceedings of the trial, which was conducted by the Special Court against the respondent at Islamabad. The impugned judgment was passed after the final judgment convicting the respondent had been announced by the Special Court. Serious issues have been raised before us about the jurisdiction exercised by the High Court and the grounds for exercising such jurisdiction.

#### Territorial jurisdiction of the Lahore High Court

12. The primary contention of the learned counsel for the petitioners and the learned AAG is that the Lahore High Court lacked territorial jurisdiction to entertain the writ petition of the respondent filed against the acts done and proceedings taken by the Special Court at Islamabad. This contention, we find, is well-founded. Any act done or proceeding taken by the Special Court at Islamabad could only be challenged, as per Article 199(1)(a)(ii), before the High Court within whose territorial jurisdiction such act was done or proceeding taken, that is, the Islamabad High Court. Because of this legal position, the persons, including the respondent's counsel Barrister Salman Safdar, who were aggrieved of some acts and proceedings of the Special Court had challenged the same in the Islamabad High Court.<sup>10</sup> But the respondent, instead of agitating his grievance in the Islamabad High Court against the act done and proceeding taken by the Special Court at Islamabad, chose the forum of the Lahore High Court, and the latter court wrongly entertained the same.

13. The Lahore High Court assumed territorial jurisdiction in the matter, stating the reason that since the respondent also challenged,

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<sup>9</sup> Lahore High Court Bar Association v. General (Retd.) Pervez Musharraf, 2019 SCMR 1029.

<sup>10</sup> Govt. of Pakistan v. Special Court, PLD 2020 Isl 82.

along with the acts and proceedings of the Special Court, the Federal Government's acts, i.e., the acts of filing the complaint and constituting the Special Court, it had the jurisdiction to adjudicate upon the matter. The reason is flawed and is also against the law declared by this Court in *Sandalbar*<sup>11</sup> and *Amin Textile*<sup>12</sup> as well as by the Lahore High Court in *Sethi and Sethi*.<sup>13</sup> The ratio of these cases is that it is the dominant object of the petition, i.e., the main grievance agitated and the ultimate relief sought in the petition, which determines the territorial jurisdiction of the High Courts. If the ultimate relief sought relates to an act done or proceeding taken within the territorial jurisdiction of a particular High Court, no other High Court in the country can assume and exercise writ jurisdiction on the pretext that one of the reliefs sought relates to an act of a federal body. The splitting of claims and reliefs in several actions (suits or petitions) regarding one cause of action is also not legally permissible under Order II, Rule 2, CPC.<sup>14</sup> No person can, therefore, seek relief regarding an act of a federal body from one High Court and relief regarding an act done in furtherance of or pursuance to that act from another High Court. Both reliefs must be sought in one petition and adjudicated by the High Court which has territorial jurisdiction over both acts.

14. In the present case, the main grievance agitated and the ultimate relief sought by the respondent in his writ petition were about the acts done and the proceedings taken by the Special Court at Islamabad. Over such acts and proceedings, only the Islamabad High Court enjoyed territorial jurisdiction, and only the Islamabad High Court could judicially review the legality thereof under Article 199(1)(a)(ii) of the Constitution. The Lahore High Court had no such jurisdiction; it wrongly assumed and exercised the jurisdiction that was not vested in it by the Constitution with regard to the acts done and proceedings taken outside its territorial jurisdiction.

15. We have also noted that probably, to grant itself territorial jurisdiction, the Lahore High Court observed in the impugned judgment that the PCO was issued by the respondent as Chief of Army Staff, at the

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<sup>11</sup> *Sandalbar Enterprises v. Central Board of Revenue*, PLD 1997 SC 334.

<sup>12</sup> *Amin Textile Mills v. Pakistan*, 1998 SCMR 2389.

<sup>13</sup> *Sethi and Sethi v. Federation of Pakistan*, 2012 PTD 1869.

<sup>14</sup> *Province of Punjab v. Shehzad Anjum*, 2024 SCP 68.



General Headquarters, Rawalpindi, therefore, it had territorial jurisdiction to entertain the writ petition at Lahore. The grievances agitated in the writ petition and the reliefs sought therein had no connection with the legality of the PCO. It appears that the High Court either contrived or misunderstood the subject matter of the writ petition by considering it to be related to the legality of the PCO. In any event, this Court had already held, in *Sindh High Court Bar Association*,<sup>15</sup> the PCO to be unconstitutional. Therefore, the assumption of jurisdiction by the Lahore High Court on this ground was unabashedly misplaced. Though the Federal Government is deemed to function all over Pakistan, the actions of the Federal Government in constituting the Special Court and filing a complaint for high treason against the respondent in Islamabad, and the trial being conducted by the Special Court in Islamabad, can in no manner be said to have affected the respondent within the territorial jurisdiction of the Lahore High Court.

16. Although the lack of territorial jurisdiction of the Lahore High Court is sufficient to set aside the impugned judgment, however, in view of the seriousness of the matter, we are inclined to dilate upon the other legal grounds also, but without discussing the merits of the case. Since the appeal filed by the respondent under Section 12(3) of the Special Court Act against the final judgment of the Special Court has been dismissed by this Court by an order of even date, we shall confine ourselves to the jurisdictional and legal challenges made against the impugned judgment.

#### Availability of an alternate adequate remedy

17. The next challenge, made before us, on the exercise of jurisdiction by the High Court is that the respondent had an alternate adequate remedy under the law; therefore, the High Court should have kept its hands off the matter and should not have proceeded to exercise the writ jurisdiction under Article 199 of the Constitution. In this regard, we have noted that the Special Court conducting the trial of the respondent for the offence of high treason was constituted under a special law i.e., the Special Court Act. Section 3 of the Special Court Act confers exclusive jurisdiction on the Special Court to try certain offences, including any

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<sup>15</sup> *Sindh High Court Bar Association v. Federation of Pakistan*, PLD 2009 SC 789.

offence punishable under the High Treason Act. Section 3 of the Special Court Act is reproduced below, for ease of reference:

**3. Certain offences triable by Special Court.**

(1) Any offence punishable under sections 121, 121A, 122, 123 and 123A of the Pakistan Penal Code (Act XLV of 1860), and any offence punishable under the High Treason (Punishment) Act, 1973 (LXVIII of 1973), including an offence of conspiracy to commit any such offence, whether committed before or after the commencement of this Act, shall be tried by a Special Court in accordance with the provisions of this Act.

(2) No court other than the Special Court shall try an offence which is triable by the Special Court under sub-section (1).

(3) If, in the course of a trial before the Special Court, the Court is of opinion that an accused before it has committed or appears to have committed any offence other than an offence referred to in sub-section (1), the Special Court shall record such opinion and refer such accused for the trial of such other offence to a court having jurisdiction to try the offence.

Section 12 of the Special Court Act, reproduced below, states that the jurisdiction of the Special Court is not to be questioned; it also provides a right of appeal against the final judgment of the Special Court to the Supreme Court.

**12. Jurisdiction, etc., of Special Court not to be questioned.**

(1) No Court shall entertain any plea as to the jurisdiction of the Special Court or as to the legality or propriety of anything done or purported to be done by the Special Court or order the release under section 491 or section 498 of the Code<sup>16</sup> or any other law of any accused person in a case triable by the Special Court for so long as the Court is seized of the case.

(2) Save as provided in sub-section (3), no order, judgment or sentence of the Special Court shall be called in question in any manner whatsoever in or before any court or other authority.

(3) Any party aggrieved by the final judgment of the Special Court may prefer an appeal to the Supreme Court within thirty days of the passing of the judgment.

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<sup>16</sup> As per Section 2(a) of the Special Court Act, this means the Code of Criminal Procedure, 1898.

It is evident from the above provisions that through Section 3 of the Special Court Act, exclusive jurisdiction to try the offence of high treason is conferred on a Special Court constituted for this purpose. Further, under Section 12(1), no Court can entertain any plea as to the jurisdiction of the Special Court, or as to the legality or propriety of anything done or purported to be done by the Special Court in a case triable by the Special Court for so long as the Special Court is seized of the case. Section 12(2) further stipulates that, save as provided in subsection (3), i.e., except through an appeal filed before this Court, no order, judgment or sentence of the Special Court shall be called in question in any manner whatsoever in or before any Court or other authority. Through Section 12(3), a right of appeal before this Court has been provided against the final judgment of the Special Court, being the only right of appeal. Therefore, it was argued, the constitutional bar contained in Article 199(1) of the Constitution on exercising the writ jurisdiction in case of availability of an "other adequate remedy" was fully attracted.

18. Where an adequate remedy is available under the relevant law, this Court has strictly deprecated circumventing that remedy and invoking the writ jurisdiction of the High Court under Article 199 of the Constitution.<sup>17</sup> The writ jurisdiction of the High Court cannot be exploited while having an alternate equally efficacious and adequate remedy provided under the law; such remedy cannot be bypassed to attract the writ jurisdiction.<sup>18</sup> The doctrine of exhaustion of remedies accentuates that a litigant must not circumvent or bypass the provisions of the relevant law that provide for an adequate remedy.<sup>19</sup> If a party does not choose the remedy available under the law, the writ jurisdiction of the High Court cannot be invoked and exercised in his favour.<sup>20</sup> Where a matter arises under a statute and is adjudicated by a forum provided

<sup>17</sup> Imran Khattak v. Sofia Waqar Khattak, 2014 SCMR 122; Tariq Transport Company v. Sarghodha-Bhera Bus Service, PLD 1958 SC (Pak.) 437; Deputy Commissioner of Income Tax/Wealth Tax v. Punjab Beverage Company, 2008 SCMR 308; Amin Textile Mills v. Commissioner of Income Tax, 2000 SCMR 201.

<sup>18</sup> Sher Afgan Khan Niazi v. Ali S. Habib, 2011 SCMR 1813; Muhammad Abbasi v. SHO Bhara Kahu, PLD 2010 SC 969; Special Secretary-II v. Fayyaz Dawar, 2023 SCMR 1442; Mian Azam Waheed v. Collector of Customs, 2023 SCMR 1247; Sana Jamali v. Mujeeb Qamar, 2023 SCMR 316; Mehboob Ali Malik v. Province of West Pakistan, PLD 1963 (W.P.) Lahore 575; Muhammad Abbasi v. SHO Bhara Kahu, PLD 2010 SC 969; Sher Afgan Khan Niazi v. Ali S. Habib, 2011 SCMR 1813.

<sup>19</sup> Mian Azam Waheed v. Collector of Customs, 2023 SCMR 1247.

<sup>20</sup> Chief Settlement Commissioner v. Ashfaq Ali, PLD 2003 SC 132.

therein, and the said statute also provides a remedy of appeal or revision either in the High Court itself or directly before this Court, the High Court should not in its writ jurisdiction interfere with such matter.<sup>21</sup>

19. We therefore hold that the remedy of appeal provided before this Court by Section 12(3) of the Special Court Act against the judgment of the Special Court was an alternate, adequate and efficacious remedy. And, as we have already noted above, the main grievance agitated and the ultimate relief sought in the writ petition was about the acts and proceedings of the Special Court, which could only be agitated before this Court in appeal. Instead of waiting for the Special Court to announce its judgment (which was announced on 17.12.2019, i.e., within less than a month) and availing the remedy of appeal before this Court, the respondent filed the writ petition assailing the order of the Special Court whereby it reserved its judgment. Later on, the respondent himself acknowledged the availability of alternate adequate remedy by filing an appeal before this Court under Section 12(3) of the Special Court Act. Therefore, in view of the availability of an adequate remedy of appeal before this Court, the High Court could not have exercised its writ jurisdiction under Article 199 of the Constitution, arrogating to itself the appellate jurisdiction vested in this Court under Section 12(3) of the Special Court Act. Consequently, the impugned judgment fails on this ground as well.

#### Decision by High Court on merits of the case

20. Not only did the High Court assume jurisdiction not vested in it but it also dilated upon the merits of the matter, which it could not do as the High Court was not the appellate forum. The High Court, without enjoying any jurisdiction whatsoever, gave its own findings on the core subject matter of the trial, i.e., whether the respondent had committed the offence of high treason under Article 6 of the Constitution read with Section 2 of the High Treason Act. By doing this the High Court unlawfully assumed the appellate jurisdiction exclusively vested in the Supreme Court under Section 12(3) of the Special Court Act.

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<sup>21</sup> Khalid Mehmood v. Collector of Customs, 1999 SCMR 1881.

### High Court granted the relief not sought

21. We have noted that the High Court had also granted relief which was not even sought in the writ petition. The relief sought in the prayer clause of the writ petition, as noted above, mainly challenged the order of the Special Court, dated 19.11.2019, whereby it had reserved its judgment. No prayer was made to seek a determination as to whether the respondent had committed the offence of high treason. However, the High Court overstretched its jurisdiction by proceeding to determine the core question of whether the respondent had committed the offence of high treason, and then held that the actions of the respondent were not part of Article 6 at the time of the commission of the said actions. The High Court not only assumed the exclusive jurisdiction of the Special Court which was to determine whether the respondent had committed the offence of high treason but also usurped the appellate jurisdiction of the Supreme Court. The High Court should have remained within the confines of the dispute brought before it and decided the same in accordance with the law and the Constitution.<sup>22</sup>

### Constitutionality of Section 9 of the Special Court Act

22. The High Court also declared the entire Section 9 of the Special Court Act as *ultra vires* the Constitution, even though the respondent had only challenged its 'offending portion' to the extent it provides that "no trial shall be adjourned by reason of the absence of any accused person due to illness". Section 9 of the Special Court Act expressly restricts granting adjournments during the proceedings of such trial, undoubtedly because of the seriousness of the offence of high treason. Section 9 of the Special Court Act is reproduced here, for ready reference:

#### **9. Restriction of adjournments.**

No trial before the Special Court shall be adjourned for any purpose unless the Special Court is of opinion that the adjournment is necessary in the interests of justice and, in particular, no trial shall be adjourned by reason of the absence of any accused person due to illness, or if the absence of the accused or his counsel has been brought about by the accused person himself, or if the behavior of the accused person prior to such absence has been, in the opinion of the Special Court, such as to impede the course of justice but, in any such case, the Special Court shall

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<sup>22</sup> Irfan Bashir v. DC, Lahore, PLD 2021 SC 571.

proceed with the trial after taking necessary steps to appoint an advocate to defend any such accused person.

A plain reading of Section 9 shows that it deals with the absence of the accused person not only due to his illness but also where the absence of the accused person or his counsel has been brought about by the accused person himself, or where the behaviour of the accused person prior to such absence has been such as to impede the course of justice. In such cases, the Special Court is mandated to proceed with the trial after taking the necessary steps to appoint an advocate to defend such an accused person. The respondent was neither “aggrieved”, as required by Article 199(1)(a) or (c) of the Constitution, nor had assailed the entire provision of Section 9. However, the High Court proceeded to declare the entire provision as *ultra vires* the Constitution without providing any reasoning except that trial in *absentia* cannot take place. In any event, the matter of trial in *absentia* had been dealt with by this Court in *Lahore High Court Bar Association*.<sup>23</sup>

#### Misapplying *Mustafa Impex*

23. It was observed in the impugned judgment that the Secretary Interior, in his capacity as the officer authorized by the Federal Government *vide* SRO 1234(I)/94 dated 29.12.1994 under Section 3 of the High Treason Act, can only file a complaint for high treason on the recommendations of the Federal Government, and under Section 3 of the Special Court Act it is the Federal Government that constitutes the Special Court. The whole exercise was then set aside by declaring it as illegal, unconstitutional and void *ab initio* on the ground that the said actions were taken by the Prime Minister, not by the Federal government, and therefore, were not conducted in accordance with the principle laid down in *Mustafa Impex*.<sup>24</sup> The High Court, however, did not consider the decision of this Court rendered in *PMDC*,<sup>25</sup> which had held that the principle settled in *Mustafa Impex* did not have retrospective application, and applies only from the date of its pronouncement, i.e., 18.06.2016. The Special Court was constituted *vide* notification dated 20.11.2013 and the complaint was filed on 12.12.2013. Both these actions were

<sup>23</sup> *Lahore High Court Bar Association v. General (Retd.) Pervez Musharraf*, 2019 SCMR 1029.

<sup>24</sup> *Mustafa Impex v. Government of Pakistan*, PLD 2016 SC 808.

<sup>25</sup> *PMDC v. Muhammad Fahad Malik*, 2018 SCMR 1956.

taken before *Mustafa Impex*; therefore, the law declared therein did not apply to them. Any reconstitution of the Special Court before *Mustafa Impex* could also not be challenged for the same reason.

24. As to the reconstitution of the Special Court after *Mustafa Impex*, the relevant summaries moved, approvals granted and notifications issued have been placed on the record by the learned AAG. On perusing the same, we have noted that the process of reconstituting the Special Court was, in fact, in compliance with the law declared in *Mustafa Impex*. Particularly, we have noted that the Judges of the Special Court, who announced the final judgment on 17.12.2019, namely, Justices Waqar Ahmed Seth,<sup>26</sup> Nazar Akbar<sup>27</sup> and Shahid Karim,<sup>28</sup> were appointed with the approval of the Federal Government, i.e., the Federal Cabinet. Therefore, the High Court could not have set aside the acts of filing the complaint and the constitution or reconstitution of the Special Court on the ground that *Mustafa Impex* was not complied with.

#### Violation of the directions and judgments of this Court

25. Another disconcerting dimension of the case is that the High Court acted in outright violation of the express directions and judgments of this Court. The matter of the trial of the respondent for the offence of high treason had come before this Court a number of times and was dealt with in *Moulvi Iqbal Haider*,<sup>29</sup> *Abdul Hameed Dogar*<sup>30</sup> and *Lahore High Court Bar Association*,<sup>31</sup> and the respondent was duly represented by counsel in all these cases.

26. Despite the said authoritative judgments and orders of this Court dealing specifically with the trial of the respondent by the Special Court, the High Court in derogation of the same set aside the entire proceedings of the trial of the respondent through the impugned judgment. It ignored particularly the judgment of this Court rendered in *Lahore High Court*

<sup>26</sup> Summary for the Cabinet was moved on 03.10.2019, approved on the same date, and the notification for his appointment was issued on 04.10.2019.

<sup>27</sup> Summary for the Cabinet was moved on 18.04.2018, approved on 08.05.2018, and the notification for his appointment was issued on 13.06.2018.

<sup>28</sup> Summary for the Cabinet was moved on 14.02.2019, approved on 21.02.2019, and the notification for his appointment was issued on 28.02.2019.

<sup>29</sup> *Moulvi Iqbal Haider v. Federation of Pakistan*, 2013 SCMR 1683.

<sup>30</sup> *Abdul Hameed Dogar v. Federal Government*, PLD 2016 SC 454.

<sup>31</sup> *Lahore High Court Bar Association v. General (Retd.) Pervez Musharraf*, 2019 SCMR 1029.

*Bar Association*<sup>32</sup> and declared Section 9 of the Special Court Act *ultra vires* in its entirety, which was not even prayed for by the respondent.

27. Failing to adhere to the judgments and orders of the Supreme Court undermines the credibility and effectiveness of the entire judicial system established by the Constitution. Judgments of this Court being binding on all judicial and executive authorities of the country is a constitutional obligation under Articles 189 and 190 of the Constitution. This obligation reflects a fundamental commitment to preserving the integrity and sanctity of the Supreme Court. Disregard of the abovementioned judgments and orders by the Lahore High Court amounts to judicial effrontery and impropriety. The impugned judgment passed by the Lahore High Court in sheer violation of the judgments and orders of this Court is, therefore, not only without jurisdiction but also unconstitutional.

28. The foregoing are the reasons for our short order dated 10.01.2024 whereby these petitions were dismissed in the following terms:

The impugned judgment dated 13 January 2020 passed by the Lahore High Court, Lahore in Writ Petition No. 71713 of 2019 is not sustainable and is accordingly set aside by converting these petitions into appeals and allowing them. Detailed reasons shall be given later.

Chief Justice

Judge

Judge

Islamabad,  
10<sup>th</sup> January, 2024.  
**Approved for reporting**  
*Sadaqat*

Judge

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<sup>32</sup> Lahore High Court Bar Association v. General (Retd.) Pervez Musharraf, 2019 SCMR 1029.