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Supreme Court of Pakistan

learned trial court would amount to contempt of Court and shall entail serious consequences.

Justice of Peace and the fact-finding observations of High Court is beyond the scope of its jurisdiction under Section 561-A, Cr.P.C.

Foreign Superior Courts

Mens rea is irrelevant in physical acts expressly forbidden by law.

Supreme Court of Pakistan

1. *Capital Development Authority, Islamabad v. M. Sajid Pirzada*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._993_2014.pdf

Present:

Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan, JJ

The term "future use" mentioned in the master plan of the housing society for the reserved land cannot be restricted to amenity purposes alone.

In this case, the controversy was regarding the allotment of plots on the land that was not reflected in the Master Plan. In this regard, the Apex Court observed that the plots in question were part of land designated for "Future Use" in the Master Plan, and there was no legal restriction against their allotment for residential purposes in a residential area. The Court also noted that the allotments were made to accommodate individuals who could not use their originally allotted plots due to encroachment. The Court further observed that the rights of the private respondents were not violated by the allotments, and the term "Future Use" did not imply that the land must be left open or used for amenity purposes. It was further observed that there was no actual obstruction of light and air, which are typical concerns in easement rights cases. Furthermore, it implies that even if there were easement rights involved, such rights could not be addressed within the constitutional jurisdiction of the High Court. Consequently, the Supreme Court converted the petitions into appeals and allowed them, thereby restoring the cancelled allotments and disposing of all listed applications.

2. *Province of Punjab through Secretary C&W & others v. M/s Haroon Construction Company, Government Contractor, etc & others*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._2226_l_2021_02042024.pdf

Present:

Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail and Mr. Justice Athar Minallah

Principles of Public Procurement enunciated; emphasized on courts to encourage and support settlement of disputes thorough mediation.

The petitioners invoked jurisdiction of Supreme Court against the order of High Court where the claim of the contractors was dismissed while interpreting Rule 56 of the Punjab Procurement Rules, 2014 ("Rules").

The central question before the Supreme Court was whether the procuring agency could require the bidder to pay additional performance security over and above the bid security and performance guarantee provided under Rules 27 and 56 of the Rules?

The Hon'ble Justice Syed Mansoor Ali Shah before discussing the merits of the case discussed in detail the concept of public procurement, procurement agency and the powers and functions of the same. It is held

by the court that one of the fundamental principles of public procurement is compliance with the law. Procurement activities must adhere to the legal and regulatory framework established by the law. Introducing new terms and conditions outside or inconsistent to the regulatory framework under the law can compromise the fairness and transparency of the public procurement process. The role of the Organization for Economic Co-operation and Development ("OECD"), public procurement is also discussed that it deals with the regulation of principles, rules and procedures applied to States in order to implement efficient processes when acquiring goods, services or works. The Principles given by OECD provides a policy instrument for enhancing integrity in the entire public procurement cycle and take a holistic view by addressing various risks to integrity, from needs assessment, through the award stage, contract management and up to final payment.

The Supreme Court also focused on Mediation provided by rule 68 of procurement rules, it is elucidated by the Hon'ble Justice Shah that mediation, as a form of alternative dispute resolution (ADR), has garnered widespread acclaim for its efficiency, cost-effectiveness, and ability to facilitate amicable settlements. In contrast to the adversarial nature of litigation, mediation embodies a collaborative approach, encouraging parties to find mutually beneficial solutions. Hon'ble Justice Shah emphasized on the courts below to encourage the mediation process and directed that the courts should not only encourage mediation but also exhibit a pro-settlement and a pro-mediation bias. This bias is grounded in the belief that settlements are generally more efficient and satisfactory for all parties involved compared to outcomes determined by a court. By fostering a pro-settlement bias, courts can contribute to a more harmonious and efficient dispute resolution landscape, where parties are empowered to resolve conflicts collaboratively and constructively.

3. *M/s Tanveer Cotton Mills & other v. Summit Bank Limited, etc.*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1422_l_2021_28062024.pdf

Present:

Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar & Mr. Justice Athar Minallah

(i) A company against which a winding-up order is passed does have the right to appeal it.
(ii) The winding-up order can be challenged by the company in its name through a person authorized by its board of directors. As despite the winding-up order and appointment of the liquidator, certain powers, called 'residuary powers" still remain with the directors of the company.
(iii) Directors shall pay the counsel's fee from their personal sources other than the funds and assets of the company and also bear the costs of appeal or petition for leave to appeal.

Upon the order of winding up of company by the Lahore High Court,

the petitioners challenged the impugned order before Supreme Court and filed this leave to appeal. Preliminary objection rose by the respondents that the petitioners cannot file this leave as they have no *locus standi* due to winding up of company. The Supreme Court formulated below three questions.

Whether a company that has been ordered to be wound up can challenge the winding-up order in its name through its board of directors or the chief executive officer?

How is the company to exercise its right of appeal? Being a juristic person, it needs to act through natural persons. Who are those natural persons: directors, chief executive officer or liquidator?

Who would pay the counsel for the company in filing the appeal or petition for leave to appeal against the winding-up order, as well as the costs to the respondents if the Court awards the same while dismissing the appeal or petition?

Hon'ble Justice Mansoor Ali Shah while speaking for the court declined all the preliminary objections raised by the respondents and decided the questions in affirmative while discussing same proposition in other jurisdictions.

It is held by the court that "A well-settled principle of law, which hardly needs any references, is that where a right of appeal is provided from a judgment, decree or order without specifying the persons who can avail it, every person who is adversely affected and thus aggrieved by such judgment, decree or order can avail that right of appeal. A company is a separate juristic person, distinct from its directors and shareholders. When every person has a right to appeal a judgment, decree or order made against him, a company, which is also a person, cannot be treated differently. Just as any other person against whom an order is made can do, a company also has the right to argue before the appellate court that an order made against it is wrong. A winding-up petition is filed against a company. The winding-up order is made against the company. The company is thus a person aggrieved by such an order. Therefore, a company against which a winding-up order is passed does have the right to appeal it.

While addressing the second question, Justice Shah established that "despite the appointment of the liquidator, certain powers still remain with the directors of the company who, before the winding-up order, had the ultimate responsibility for managing the company and acting in its best interests in their fiduciary capacity. Such powers are usually referred to as 'residuary powers".

The Court has further established that the directors inevitably have to arrange the funds for payment of fees to the counsel, etc., from their personal sources other than the funds and assets of the company and also bear the costs of appeal or petition for leave to appeal, if any, in case of dismissal. However, if the company's appeal succeeds and the winding-up order is set aside, they may get reimbursement of those expenses from the company's funds under a resolution of the board of directors made after the success of the appeal.

4. Mehran v. Ubaid Ullah, etc

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._80_p_2024.pdf

Present:

Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar & Mr. Justice Athar Minallah

The main objective of the Juvenile Justice System Act, 2018 is to modify and amend the law relating to the criminal justice system for juveniles, with a special focus on disposing of their cases through diversion and socially reintegrating with the 'best interest of the child' principle as a primary consideration.

The petitioner, a juvenile, seeks leave to appeal against the judgment of the Peshawar High Court, Peshawar whereby the post arrest bail of the petitioner was declined which was filed on the statutory ground of delay in the conclusion of his trial.

The Supreme Court of Pakistan adjudicated upon the legal principles of juvenile justice system. It is considered by the court that child justice is centered on the idea that children, due to their age and maturity, should not be dealt with in the same manner as adults within the legal system. It emphasizes rehabilitation and education, rather than punishment, recognizing the potential for growth and change in young individuals. Both child and juvenile justice systems are shaped by international conventions like the UNCRC, which provides a broad framework and standards for the treatment of children within judicial systems worldwide.

Hon'ble Justice Syed Mansoor Ali Shah held that the denial of bail and detention of an accused pending trial curtail his fundamental rights to liberty, fair trial and dignity guaranteed by Articles 9, 10-A and 14 of the Constitution, statutory provisions on bail matters of juveniles, such as Section 6(5) of the 2018 Act, must be interpreted in a manner that is progressive and expansive of these rights. While discussing the legal consequences of section 6(5) of the Juvenile Justice System Act, 2018 and Juvenile justice system ordinance, 2000, the post arrest bail was granted to the juvenile petitioner.

5. *Umar Farooq v. Sajjad Ahmad Qamar and others*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._210_2024_r.pdf

Present:

Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed and Mr. Justice Irfan Saadat Khan

Not mentioning of the criminal case by a candidate in the affidavits filed by him did not entail any penal or legal consequences including, in particular, the rejection of the nomination papers.

This judgment clarifies the legal position regarding the eligibility of candidates facing criminal charges or allegations of being absconders. It underscores that such allegations do not automatically disqualify a candidate unless specified by law. The ruling also highlights the temporary nature of the affidavit requirement established in *Habib Akram* case, emphasizing its non-

applicability to subsequent election cycles. This decision reinforces the importance of adhering strictly to the legislative framework governing elections and prevents arbitrary exclusions based on interim judicial measures.

The bench observed that being an alleged absconder or proclaimed offender does not disqualify a candidate from contesting elections unless explicitly provided by the Constitution or the Elections Act, 2017. The Court further observed that the affidavits required by the decision in *Habib Akram* was an interim measure specific to the 2018 election cycle and had no application for the 2024 General Elections. Therefore, the non-mentioning of the criminal case by the petitioner in the affidavits filed by him did not, and could not, entail any penal or legal consequences including, in particular, the rejection of the nomination papers.

6. *Fozia Mazhar v. Additional District Judge, Jhang and others*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1737_l_2020.pdf

Present:

Mr. Justice Yahya Afridi, Mr. Justice Amin-Ud-Din Khan

i) Whether Section 12(2) of C.P.C. can be invoked to challenge the judgment and decree passed by a Family Court under the Family Courts Act, 1964?

ii) Whether the High Court in the exercise of its constitutional writ jurisdiction rightly declined to not interfere in the concurrent findings of facts recorded by the courts below?

iii) Whether recalling of the decree of dissolution of marriage on the ground of khula passed by the Family Court vide order dated 27.04.2015 was in violation of Section 7 of the Muslim Family Law Ordinance, 1961 read with Section 21 of the Family Courts Act, 1964?

Briefly, the appellant challenged the concurrent findings of three courts below declaring that recalling of the decree of dissolution of marriage on the ground of Khula on a so-called joint application of the spouses was obtained through misrepresentation warranting interference under Section 12(2), Code of Civil Procedure, 1908. Further, the matrimonial dispute between the parties has a prolonged and complex history spanning over more than a decade and still are pending final adjudication in two jurisdictions – Pakistan and Canada.

Hon'ble Mr. Justice Yahya Afridi while speaking for the bench in reply of query No.1 observed that the Family Court may apply the general principles enshrined in the C.P.C. during trial proceedings. This includes exercising jurisdiction to entertain applications from aggrieved parties challenging the validity of a judgment, decree, or order on the grounds of fraud or misrepresentation, as was done by the respondent in this case. The three lower courts rightly maintained this stance.

In response to query No.2, the Court maintained that the scope of judicial review by the High Court under Article 199 of the Constitution of the

Islamic Republic of Pakistan, 1973 ("Constitution") is limited. It is confined to instances of misreading or non-reading of evidence, or findings based on no evidence, which may cause a miscarriage of justice. The Hon'ble Judge further noted that findings of fact by the District Court on appeal under the relevant Act should generally be considered final. Interference by the High Court in its constitutional writ jurisdiction should be an exception, only in cases where the findings are based on no evidence or gross misreading/non-reading of material evidence, rendering the findings without lawful authority and of no legal effect per Article 199(1)(a)(ii) of the Constitution. Regarding the petitioner's contention that her application should be considered a unilateral declaration to recall her dissolution of marriage, the Court remarked that this argument could not be entertained at this stage, as it contradicts her express stance in the disputed application, thus estopping her by her own words.

On query No.3, the Court held that such an action, already upheld by the lower courts, would be merely academic in this case. The Court quoted the principle, "If it is not necessary to decide more to dispose of a case, then it is necessary not to decide more," suggesting that this issue would be better resolved in a case where its resolution directly impacts the adjudication of the dispute. The Supreme Court finally held that the High Court rightly declined to interfere in the lower courts' findings. Consequently, the petition is dismissed, and leave to appeal is refused.

7. *M/s Taj Wood Board Mills (Pvt) Limited etc v. Government of Pakistan through Federal Secretary Finance and Revenue Division, Islamabad, etc.*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1896_2022.pdf

Present:

Mr. Justice Yahya Afridi, Mr. Justice Amin Uddin Khan, Mrs. Justice Ayesha A Malik

Preferential treatment and discrimination in the application of fiscal laws to businesses in the merged districts of Khyber Pakhtunkhwa

The petitioners, manufacturing companies in the erstwhile Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA), challenged a Peshawar High Court judgment regarding the application of fiscal and tax laws post-2018 merger of FATA/PATA into Khyber Pakhtunkhwa. The primary grievance arose from the extension of fiscal and tax laws to the merged districts and the differential treatment meted out to certain businesses under various circulars and orders issued by the Federal Board of Revenue (FBR).

Hon'ble Mr. Jusice Yahya Afridi speaking for the bench upheld the decision of Peshawar High Court which struck down condition (v) of Circular No. 1 of 2021 and found the preferential treatment granted to bulk-importing edible oil manufacturers under CGO No. 8 of 2021 as discriminatory. He observed and referenced a similar case *(M/s AK Tariq Foundry)* to emphasize that

creating subclasses within businesses located in the merged districts without rational basis violates the equality clause enshrined in Article 25 of the Constitution. However, the Court held that the FBR has the authority to issue circulars and instructions, except for condition (v) of Circular No. 1 of 2021, which was deemed ultra vires. Likewise, condition (v), which authorized annual audits of importers, was struck down being inconsistent with existing laws.

8. *Shahzad Amir Farid v. Mst. Sobia Amir Farid and others*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3155_l_2023.pdf

Present:

Mr. Justice Yahya Afridi, Mr. Justice Amin Uddin Khan, Mrs. Justice Ayesha A Malik

The act of nonpayment of interim maintenance by the petitioner fixed by the family court is vexatious and abuse of judicial process causing delays. It must be strongly discouraged by imposing fiscal penalties.

The petitioner challenged an order from the Lahore High Court which dismissed his writ petition regarding non-payment of maintenance for his minor children. Brief facts of the case are that the respondent filed a suit for maintenance against the petitioner, her husband. The Family Court ordered interim maintenance under Section 17-A of the West Pakistan Family Courts Act, 1964. Despite multiple opportunities, the petitioner failed to comply with these orders, resulting in his defense being struck off and the suit decreed in favour of the respondent. Subsequent appeals to the District Court and High Court were also dismissed due to his continued non-compliance and failure to appear in court.

Hon'ble Mr. Justice Yahya Afridi, speaking for the bench, while responding the consistence non-compliance of the payment of maintenance as ordered in terms of section 17-A of the Act observed that the Family Court's decision on the amount of maintenance was neither arbitrary nor capricious. High Court rightly upheld the Family Court's decision, finding no substantive illegality, procedural impropriety, or decisional irrationality. The Court further observed that the petitioner's conduct was vexatious and an abuse of the judicial process, contributing to undue delays and overburdening the courts and such frivolous petitions need to be strongly discouraged. To discourage such behavior in the future, the Court imposed a penalty of Rs. 100000/- on the petitioner to be recovered as part of the maintenance decree.

9. *Muhammad Arshad v. Bashir Ahmad*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._138_l_2010.pdf

Present:

Mr. Justice Yahya Afridi Mr**. Justice Amin-ud-Din Khan** Mrs. Justice Ayesha A. Malik

There must be strict adherence to section 24 of the Punjab Pre-emption Act, 1991, concerning deposit of Zar-e-Soim within 30 days from the date of filing the suit. The Court lacks discretion to extend this statutory period.

The suit for pre-emption was filed on 12.06.2004, but the required 1/3rd deposit of the sale consideration (Zar-e-Soim) was made after 30 days from the filing date. The trial court dismissed the application for rejection of the plaint. However, the revisional court dismissed the suit on the grounds of delayed deposit. The plaintiff-respondent's writ petition against the revisional court's decision was accepted by the Lahore High Court. The appellants then sought leave to appeal, which was granted on 31.03.2010. The question before the court was whether in the light of section 24 of the Punjab Preemption Act, 1991 "Zare Soim" was to be deposited within 30 days from the date of filing of the suit or from the date of order passed by the court.

Hon'ble Mr. Justice Amin-ud-Din Khan, speaking for the bench observed that the plaintiff was required to deposit the 1/3rd amount within 30 days from the date of filing the suit, as per Section 24 of the Punjab Pre-emption Act, 1991. The Court noted that the law commands strict adherence to the 30-day period for depositing Zar-e-Soim, and neither the court nor the plaintiff has the authority to extend this period. This decision aligns with previous judgments, emphasizing the non-extendable nature of the 30-day deposit period and the limited jurisdiction of the courts in such matters. The Supreme Court set aside the Lahore High Court's judgment and restored the revisional court's decision, thereby dismissing the suit of pre-emption filed by the plaintiff-respondent.

10. Rashid Baig etc. v. Muhammad Mansha etc.

https://www.supremecourt.gov.pk/downloads_judgements/c.p._925_l_2018.pdf

Present:
Mr. Justice Yahya Afridi, **Mr. Justice Amin-ud-Din Khan** and Mrs. Justice Ayesha A. Malik

Mere filing of petition before this Court does not automatically result in stay or sine die adjourn the proceedings before the learned trial/executing court. Any such practice on the part of the parties or the learned trial court would amount to contempt of Court and shall entail serious consequences.

In this case, the petitioners filed a petition under Article 185(3) of the Constitution of Pakistan against an order of the Lahore High Court dated 30.01.2018. The petitioners had initially moved applications to summon revenue officers as witnesses, which were dismissed by the trial court on 02.03.2013 and affirmed by the revisional court. They then challenged these orders through a writ petition, which was also dismissed by the High Court. During the proceedings, the trial court had sine die adjourned the case and later restored it, with various applications for adjournment filed by the petitioners contributing to delays in the case, which was initially filed in 2004.

Hon'ble Mr. Justice Amin-ud-Din Khan speaking for the bench held "that the execution proceedings as well as the proceedings before the learned trial court do not automatically stay when the petition

is filed before this Court unless an injunctive order is granted by this Court. When the injunctive order is not granted by this Court the parties to the proceedings applying for stay of the proceedings or execution without any injunctive order from this Court and in some eventualities we have seen that after refusal of injunctive order from this Court the parties to the proceedings before the learned trial court apply for stay of execution or proceedings in the suit which is not only a clear cut abuse of process of law but it is contempt of court. We observe that if this practice is carried on by the parties or even learned trial court while ignoring all these factors i.e. sine die adjourning the proceedings or stays the proceedings of the suit without any injunctive order; will face the consequences of said illegal order."

11. Javed Iqbal and others v. The State

https://www.supremecourt.gov.pk/downloads_judgements/j.p._233_2015.pdf

Present:

Mr. Justice Jamal Khan Mandokhail, *Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali*

The Criminal acts which constitute "Terrorism".

The connected petitions were disposed of through a consolidated judgment. The cases involved allegations of abduction for ransom and the murder of police officials during a raid. The Trial Court had convicted the petitioners under the Anti Terrorism Act of 1997 (ATA of 1997) and the Pakistan Penal Code (PPC), with one petitioner sentenced to death and others to life imprisonment. The Lahore High Court upheld the convictions but converted the death sentence to life imprisonment.

The Court considered whether the acts of abduction and murder fell within the ambit of terrorism as defined by the ATA of 1997.

Hon'ble Mr. Justice Jamal Khan Mandokhail , speaking on behalf of bench observed that to constitute an offence of a terrorism, it is necessary that; firstly, the action must fall within the ambit of sub-section (2) of section 6 of the ATA of 1997; and secondly, the intent, motivation, object, design and purpose behind the said act has any nexus with the ingredients of clauses (b) and (c) of section 6(1) of the ATA of 1997. To formulate an opinion whether or not such offence is an act of terrorism, the allegations made in the FIR, material collected during the investigation and the evidence available on the record have to be considered on the touchstone of section 6 of the ATA of 1997, as a whole. In the absence of any of the ingredients of section 6 of the ATA of 1997, any action, irrespective of its heinousness, causing terror or creating sense of fear and insecurity in the society, does not fall within the ambit of terrorism.

It concluded that the abduction for ransom, while heinous, did not have the intent or design of terrorism and should be tried under section 365-A PPC. The Court modified the charges accordingly, maintaining the life imprisonment sentences with the benefit of section 382-B Cr.P.C. Regarding the murder of police officials, the Court found that the petitioners' actions did not constitute an act of terrorism as

there was no intent to overawe or intimidate the government or public. The Court set aside the convictions under the ATA of 1997, acquitted one petitioner based on a compromise with the legal heirs of the deceased, and upheld the conviction under section 324 PPC for another petitioner, reducing his sentence to time already served. The sentences for all convicts were ordered to run concurrently with the benefit of section 382-B Cr.P.C.

12. Noman Mansoor alias Nomi and others v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._894_2021.pdf

Present:

Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan

Notice to the petitioner/convict under section 439(2) of the Code of Criminal Procedure (Cr.P.C.), is mandatory while converting the Criminal Appeal into a Criminal Revision.

These appeals were against the judgment of the Islamabad High Court. The petitioner-convict was convicted and sentenced under section 302(c) of the Pakistan Penal Code (PPC) to 14 years of rigorous imprisonment by the Trial Court. The High Court, upon appeal, converted the sentence to section 302(b) PPC and enhanced it to life imprisonment. The complainant filed an appeal for further enhancement of the sentence to death.

The Court considered whether the High Court could convert an appeal against acquittal into a Criminal Revision.

Hon'ble Mr. Justice Jamal Khan Mandokhail, speaking on behalf of bench answered the questions as upon filing of a direct Criminal Revision or after conversion of a Criminal Appeal into a Criminal Revision, a notice as provided by sub-section (2) of section 439 Cr.P.C. has to be issued to the other side? If not what would be its effect?

It is an admitted fact that a Criminal Appeal was filed through which the High Court considered it appropriate to reappraise the order impugned in light of the material available on the record and while exercising its inherent power, converted the Criminal Appeal into a Criminal Revision Petition, at the time of delivering the judgment. It is apparent, rather admitted fact that no notice of the proceedings upon the Criminal Revision was issued to the petitioner/convict. In its revisional jurisdiction, the High Court can enhance the sentence passed by *fora* below, but before it does so, it must comply with the provisions of subsection (2) of section 439 Cr.P.C., which make it mandatory that no Order under this section shall be made to the prejudice of the accused, unless he has had an opportunity of being heard either personally or through a legal practitioner of his choice, so as to defend himself. The purpose of issuing notice is to give an opportunity to the accused/convict either to pursue his matter personally or through a legal practitioner of his own choice so as to defend himself. Without issuing the mandatory notice, the impugned judgment is contrary to the provisions of section439 (2) Cr.P.C.

This has deprived the petitioner from his legal as well as constitutional right of consulting a legal practitioner of his own choice and fair trial as provided by Article 10 and 10-A of the Constitution of the Islamic Republic of Pakistan, respectively. As far as the contention of the learned counsel for the complainant that the convict was already before the Court in his own appeal and both the matters were heard together, therefore, he was deemed to be served and no fresh notice was required. We are not in agreement with the learned counsel for the reason that the appeal filed by the convict and the revision filed by the complainant are altogether different in their nature and outcome. Once the law prescribes a thing to be done in a particular manner, it must be done as such; therefore, a separate notice as required by sub-section (2) of section 439 Cr.P.C. was mandatory, without which no order should have been passed. As a result, the Supreme Court converted Criminal Petition into an appeal, allowed it partially, and set aside the High Court's judgment. The High Court was directed to issue the required notice to the convict and decide the Appeal and the Criminal Revision afresh, in accordance with the law, on its own merits, and based on the material available on the record. While the related appeals and the Criminal Miscellaneous Application were dismissed as infructuous.

13. Meer Gul v. Raja Zafar Mehmood & others

https://www.supremecourt.gov.pk/downloads_judgements/c.a._51_k_2021.pdf

Present:

Mr. Justice Muhammad Ali Mazhar and Mr. Justice Irfan Saadat Khan

There is no provision under the Specific Relief Act to deposit balance sale consideration in Court unless so ordered.

The appellant approached the apex Court to appeal against the order of the Sindh High Court whereby the appeal of respondents was allowed and the suit of appellant was dismissed on the ground that he did not deposit the balance sale consideration in Court at the time of institution of the suit or on the date of first appearances, nor did he file any application before the Trial Court for seeking permission to deposit the balance amount in Court.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, observed that the deposit of sale consideration or balance sale consideration in court at the time of instituting the suit is not a mandatory precondition by law. The court must order such a deposit with a timeline and specify the consequences for non-compliance in the order, while also allowing an extension of time under Section 148 CPC if necessary. In the present case, the appellant has already deposited the balance sale consideration in view of the directions contained in the appellate

judgment. The court emphasized the importance of utilizing procedural tools such as Order X, Rule 1 of the Code of Civil Procedure to ascertain facts early in the proceedings and facilitate an early resolution of disputes. The court should encourage parties to resolve disputes through alternative dispute resolution methods or expedite the trial process to avoid prolonged litigation. It was further held that courts should focus on doing substantial justice and avoid hyper-technical approaches that do not contribute to the merits of the case. It was further clarified that the jurisdiction of the High Court in a second appeal under Section 100 of the Code of Civil Procedure is confined to substantial questions of law, and it should not interfere with the findings of fact of the first appellate court. When exercising jurisdiction under Section 100 of the Code of Civil Procedure, the High Court should formulate the substantial question of law. The apex court held in the judgment that the judiciary should adopt a dynamic and proactive approach to resolving disputes, especially those involving public interest, and prioritize such cases. Consequently, the case was remanded to the High Court for a fresh decision on the second appeal, with instructions to provide an opportunity for a hearing to the parties involved.

14. The General Manager, Punjab & others v. Ghulam Mustafa & others

https://www.supremecourt.gov.pk/downloads_judgements/c.a._795_l_2012.pdf

Present:

Mr. Justice Muhammad Ali Mazhar, Ms. Justice Ayesha A. Malik and Mr. Justice Irfan Saadat Khan

High Court cannot entertain writ petitions from employees of an organization where the terms and conditions of service are governed by non-statutory rules but may seek remedy through civil courts.

The appellants have approached the apex court of Pakistan to contest the judgments of the Lahore High Court, which, in its writ jurisdiction, directed the Punjab Provincial Cooperative Bank to decide the pending departmental appeals of the respondent employees. On the other hand, a Civil Petition for leave to appeal challenges a Lahore High Court judgment that dismissed a writ petition on the basis that the Bank lacked statutory service rules, rendering the petition non-maintainable against the Bank. The central issue concerns the jurisdiction of the High Court under Article 199 of the Constitution of Pakistan, specifically whether employees of the Bank can seek redress from the High Court in the absence of statutory service rules.
The Supreme Court held that the Punjab Provincial Cooperative Bank Limited Staff Service Rules (2010) were non-statutory and framed for internal use, establishing a master-servant relationship. Therefore, the High Court cannot entertain writ petitions from employees of organizations governed by non-statutory rules. Consequently, the writ petitions filed by the employees in the Lahore High Court were not maintainable. The Court further maintained that for employees whose employment is governed by non-statutory rules, the only remedy is to file a civil suit under Section 9

of the Code of Civil Procedure, 1908, seeking relief under the master-servant relationship. The judgment also highlighted the need for judicial reforms to establish a special tribunal or court to address the grievances of employees not covered by statutory rules of service, emphasizing the protection of fundamental rights even in non-statutory employment relationships.

15. Muhammad Yousuf Bhindi etc v. M/s. A.G.E. & Sons (Pvt) Ltd. & others

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1032_k_2023.pdf

Present:

Mr. Justice Muhammad Ali Mazhar and Mr. Justice Irfan Saadat Khan

Article 163 of Limitation Act pertains to plaintiffs, while Article 164 is relevant for defendants seeking to set aside ex parte decrees.

The Supreme Court of Pakistan, in its appellate jurisdiction, addressed Civil petitions challenging the judgment of the High Court of Sindh, which had allowed Civil Revision applications and affirmed ex parte orders, judgments, and decrees passed by the Trial Court against the petitioners. The petitioners contended that they were not properly served and were unaware of the ex parte proceedings until informed by another allottee. The Trial Court had dismissed their applications to set aside the ex parte orders, which was later overturned by the Appellate Court. However, the High Court reinstated the decisions of Trial Court.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, observed that judgment of High court was based on the Diary Sheets of one suit, which was insufficient to determine proper service in all suits. The Court clarified the applicability of Articles 163 and 164 of the Limitation Act, noting that Article 163 pertains to plaintiffs, while Article 164 is relevant for defendants seeking to set aside ex parte decrees. The Court highlighted the necessity for courts to consider and decide on each case individually and distinctly, without generalizing findings from one case to others. The Court further held that the revisional court should focus on jurisdictional errors and that the revisional jurisdiction under Section 115 of the CPC is corrective and supervisory. The Court converted the civil petitions into appeals, allowed them, set aside the judgment of High Court, and remanded the matter for fresh decision-making.

16. Mst. Ishrat Bibi v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._243_2024.pdf

Present:

Mr. Justice Muhammad Ali Mazhar and Mr. Justice Athar Minallah

The principle of vicarious liability under the PPC may be considered even at the bail stage if the FIR indicates that the accused acted in preconcert or shared a common intention with co-accused persons.

The petitioner approached the apex Court to appeal against the order of the Lahore High Court whereby the post arrest bail in a case registered under Sections 302, 34, 118, 120-B,

109, and 506 of the Pakistan Penal Code was declined to her.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, observed that FIR was initially against three unknown persons for the murder of the son of complainant. The petitioner was not named in the original FIR but was later implicated through supplementary statements without clear evidence of her involvement. The Court clarified that the court hearing bail application, may direct that any person under the age of sixteen years, any woman, or any sick or infirm person accused of a non-bailable offence be released on bail. This is considered beneficial legislation and requires a purposive interpretation to extend the benefit of bail to the mentioned categories of persons, depending on the circumstances of each case.

It was observed that bail is meant to ensure the attendance of the accused at trial and is neither punitive nor preventative. The discretion for granting bail should be exercised judiciously based on the facts and circumstances of each case. The court also held that the principle of vicarious liability under the PPC may be considered even at the bail stage if the FIR indicates that the accused acted in preconcert or shared a common intention with co-accused persons. In conclusion, the Supreme Court granted bail to the petitioner, based on the rule of consistency, the first proviso to Section 497(1) Cr.PC, and the lack of reasonable grounds to believe that she was guilty of the offences alleged in the FIR.

17. Karachi Properties Investment Company v. Habib Carpets & Others

https://www.supremecourt.gov.pk/downloads_judgements/c.a._90_k_2023.pdf

Present:

Mr. Justice Muhammad Ali Mazhar and Mr. Justice Irfan Saadat Khan

Without an express agreement regarding maintenance charges in the tenancy contract, the landlord cannot claim default on these grounds.

The appellant approached the Apex Court against the order passed by the High Court of Sindh, Karachi, which set aside the orders of the Rent Controller and Appellate Court, and dismissed the ejectment application of appellant filed under Section 15 of the Sindh Rented Premises Ordinance, 1979 ("Ordinance"). The ejectment application was based on allegations of non-payment of maintenance charges and unauthorized alterations.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, observed that the case of appellant for eviction was based on the alleged default in paying maintenance charges by the respondents, which were not explicitly mentioned in the lease agreement. The Supreme Court held that for charges beyond basic amenities to be considered part of the rent and thus enforceable, but they must be clearly stipulated in the written agreement between the landlord and tenant. Since the maintenance charges were not agreed upon in writing, the appellant could not claim default based on their non-payment. The Court emphasized the importance of

consensus ad idem (agreement to the same thing) in contracts, including tenancy agreements, and noted that any omission or misrepresentation could lead to adverse consequences. For a contract to be legally binding, the parties must have a clear understanding of the terms and conditions, which should be unequivocal and incontrovertible. The Court also observed that the High Court was justified in exercising its writ jurisdiction to correct glaring errors, misreading of evidence, or non-consideration of material evidence by the lower courts. Consequently, the Supreme Court upheld the decision of High Court, emphasizing that without an express agreement regarding maintenance charges in the tenancy contract, the landlord cannot claim default on these grounds.

18. Naseem Khan etc v. The Government of Khyber Pakhtunkhwa

https://www.supremecourt.gov.pk/downloads_judgements/c.p._2074_2023.pdf

Present:

Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik and Mr. Justice Irfan Saadat Khan

The government has the authority to change the promotion policy, and such policy changes cannot be challenged unless they infringe upon vested rights or violate laws. Promotion is not a vested right but is contingent upon meeting the criteria set by the employer.

The Petitioners approached the Apex Court against the judgment of the Khyber Pakhtunkhwa Service Tribunal, Peshawar, whereby all the service appeals were dismissed by the learned Tribunal. The petitioners, appointed as Soil Conservation Assistants (BPS-17), challenged a notification that reduced their 100% promotion quota to 75%, allocating the remaining 25% to the cadre of "Field Assistants." They contended that this change affected their seniority and promotion prospects and was violative of the Khyber Pakhtunkhwa Civil Servant Act, 1973, and the relevant rules.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, held that the determination of qualifications and conditions for promotions is the prerogative of the employer and not subject to judicial review unless there is a violation of law or rules. Changes to promotion policies by the government are lawful unless they infringe upon vested rights or contravene laws. The role of service rules committee in setting promotion eligibility is an administrative matter, and courts should not interfere without a legal breach. There is no inherent right to promotion; it is contingent upon meeting employer-set criteria. Judicial review does not extend to setting conditions for promotion eligibility unless there is a violation of relevant laws and rules. The Supreme Court upheld the decision of Tribunal, stating that the policy change was within the discretion of department and not in violation of any law or rule.

19. *Nawab Jangaiz Khan Marri v. Mir Naseebullah Khan & Others*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._292_2024.pdf

Present:

Mr. Justice Amin-Ud-Din Khan, **Mr. Justice Muhammad Ali Mazhar**
And Mr. Justice Syed Hasan Azhar Rizvi

Election Commission of Pakistan (ECP) can order re-polling under Section 9 of the Elections Act, 2017, if grave illegalities or violations have materially affected the election result, based on a summary enquiry.

The Appellant brought the Civil Appeal to apex court under Sub-section (5) of Section 9 of the Elections Act, 2017 ("Act") to challenge the order passed by the Election Commission of Pakistan ("ECP") whereby re-polling was ordered.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, upheld the order of Election Commission of Pakistan (ECP) for re-polling at four polling stations in PB-9, Kohlu. The appellant challenged the order of ECP on the grounds that it was passed without conducting an enquiry as mandated by Section 9(1) of the Elections Act, 2017, and that the ECP had exceeded its jurisdiction by issuing a similar direction twice. The appellant also contested the ECP's characterization of an 85% voter turnout as unnatural without considering the specific circumstances of the constituency. The respondent, argued that the low voter turnout was due to security issues in District Kohlu and that the re-polling order was justified given the unnatural turnout at the four stations in question. The ECP, after considering the record and the report of Returning Officer, concluded that the turnout at the four Nisao polling stations was unnatural and ordered re-polling.

The Supreme Court, in its judgment, emphasized the constitutional obligations of the ECP to ensure that elections are conducted honestly, justly, fairly, and in accordance with the law. Before passing an order under Section 9, ECP must conduct an enquiry as deemed necessary and be satisfied that the election was materially affected by illegalities or irregularities. An unusually high voter turnout in specific polling stations compared to the overall constituency turnout can indicate possible irregularities, justifying a re-poll. ECP, while exercising its powers under Section 9, is deemed to be an Election Tribunal and can regulate its own procedure. The powers of ECP under Section 9 are summary in nature, not requiring a full-fledged trial but satisfaction based on the facts and circumstances. Any person aggrieved by an ECP declaration under Section 9 may appeal directly to the Supreme Court within thirty days. The Court noted that the ECP has the power to declare a poll void and call for re-polling if grave illegalities or violations materially affect the result of the poll. The Court found that the ECP had conducted an appropriate enquiry and that the impugned order was based on facts apparent on the face of the record. The Court also referenced previous cases to illustrate the importance of considering the overall turnout

behavior in the constituency and the need to view election disputes holistically. The Court affirmed that The Election Commission of Pakistan (ECP) has the power to declare a poll void if grave illegalities or violations of the Act or Rules materially affect the result of polls. Ultimately, the Supreme Court dismissed the civil appeal.

20. Abdullah Channah v. The Administrative Committee & others

https://www.supremecourt.gov.pk/downloads_judgements/c.p._653_k_2022.pdf

Present:

Mr. Justice Muhammad Ali Mazhar and Mr. Justice Irfan Saadat Khan

Service Tribunal is empowered to hear appeals on High Court administrative orders pertaining to "Terms and Conditions" of members of subordinate judiciary.

The petitioner approached the apex Court against the decision of the Sindh Subordinate Judicial Service Tribunal, which dismissed his service appeal on the grounds of non-prosecution and non-maintainability. The appeal was found not maintainable because it challenged the order of the administrative committee of the High Court.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, clarified that the Service Tribunal has the jurisdiction to hear cases concerning the terms and conditions of service of judicial officers, even if these cases involve administrative orders issued by the High Court's Administrative Committee or the Chief Justice. This is distinct from constitutional petitions under Article 199, which are not generally maintainable against such administrative orders, as established by the precedent in *Gul Taiz Khan Marwat v. Registrar Peshawar High Court* (PLD 2021 SC 391). The Tribunal is the appropriate forum for service-related grievances of the subordinate judiciary, as it has been granted exclusive jurisdiction over these matters. The Supreme Court converted the civil petition into an appeal, allowed it, and remanded the matter to the Sindh Subordinate Judicial Service Tribunal to decide the service appeal afresh in accordance with the law.

21. Siraj Nizam v. Federation of Pakistan and others

https://www.supremecourt.gov.pk/downloads_judgements/c.a._56_k_2021.pdf

Present:

Mr. Justice Muhammad Ali Mazhar and Mr. Justice Irfan Saadat Khan

The service in a previous department could be counted for promotion eligibility if the civil servant had passed the required departmental examination and joined the new department through proper channels.

The Appellant approached the apex court against the judgment passed by the Federal Service Tribunal, Islamabad (Karachi Bench) ("Tribunal") whereby the appeal filed by the appellant was dismissed regarding his promotion from Assistant Executive Engineer (BS-17) to Executive Engineer (BS-18).

Mr. Justice Muhammad Ali Mazhar, speaking for the bench held that the Federal Service Tribunal failed to properly consider the appellant's qualifications and total length of service in different government departments for promotion purposes. Despite the appellant's successful departmental examination and direct recruitment as an Assistant Executive Engineer in BS-17, the Tribunal did not count his previous government service towards promotion eligibility, contrary to Statutory Instruction No. 157 of the Establishment Code. This oversight excluded the appellant's past service in the National Highways & Motorways Police. The Supreme Court remanded the case back to the Tribunal for a fresh decision, ensuring that the appellant's entire service history is considered in accordance with the law.

22. Govt. of Balochistan & Others v. Ghulam Rasool etc

https://www.supremecourt.gov.pk/downloads_judgements/c.p._183_q_2023.pdf

Present:

Mr. Justice Muhammad Ali Mazhar Mrs. Justice Ayesha A. Malik Mr. Justice Irfan Saadat Khan

When appointments are made following proper procedures and legal requirements, the individuals appointed gain vested rights that are protected and cannot be revoked without following the appropriate legal process.

The petitioners approached the apex court against the judgment passed by the Balochistan Service Tribunal, Quetta, whereby the service appeals of the respondents were accepted. In this case, the Supreme Court addressed the issue of employees whose appointment letters were withdrawn and services terminated without any show cause notice or opportunity for a hearing, even after completion of the recruitment process. The termination was justified on the grounds that the recruitment process did not follow the mandatory procedure for making appointments and that the appointments were made under political influence.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, observed the importance of natural justice, which requires that individuals be given the right to be heard before any adverse action is taken against them by a quasi-judicial authority, statutory body, or departmental authority. The right to a fair trial is recognized as a fundamental right, and vested rights are considered secure and not contingent on specific circumstances. The doctrine of locus poenitentiae allows for retraction before a decisive step is taken, and an illegal order does not confer perpetual rights. In this case, there was no evidence that the respondents had manipulated their appointments or were ineligible for their posts. Their appointments were recommended by a five-member Departmental Recruitment Committee after careful consideration, establishing that codal formalities were fulfilled and vested rights were created, which should not have been revoked without due process. The court held that when appointments are made

following the proper procedures and legal requirements, the individuals appointed gain certain rights because of this due process. These rights are considered "vested," meaning they are established and protected. As a result, these rights cannot be taken away or the appointments cannot be revoked in a careless or hasty manner without following the appropriate legal process. Consequently, leave to appeal was declined.

23. Haji Musharraf Mahmood Khan (deceased) through his legal heirs v. Sardarzada Zafar Abbas (deceased) through his L.Rs., etc

https://www.supremecourt.gov.pk/downloads_judgements/c.p._423_l_2018.pdf

Present:

Mr. Justice Qazi Faez Isa, CJ, **Mr. Justice Muhammad Ali Mazhar** and Mrs. Justice Musarrat Hilali

For applying the restoration of Civil Revision dismissed in default, Article 181 of the Limitation Act will apply.

The petitioners appealed to the apex court against the decision of Lahore High Court on the Office Objection. The High Court upheld the Office Objection and declined to reinstate the Civil Revision, which had been dismissed for non-prosecution.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, observed the importance of adjudicating matters on their merits rather than on technicalities, and that technicalities should not prevent the administration of justice unless there is an insurmountable obstacle. It was highlighted that there is no specific provision in the Code of Civil Procedure (CPC) or the Limitation Act for the restoration of a civil revision dismissed for non-prosecution. However, the Court can exercise its inherent powers under Section 151 of the CPC to restore such cases. The Court clarified that Article 181 of the Limitation Act, which allows a 3-year period for applications where no specific limitation applies, was applicable. The court pointed out that the imposition of a 60-day limit by High court for filing an application for restoration was contrary to the provisions of the Limitation Act and exceeded its jurisdiction by curtailing the statutory period of 3 years to only 60 days. The Supreme Court converted the civil petition into an appeal and allowed it, directing the Lahore High Court to decide the civil revision on merits after issuing notice to the parties.

24. Syed Qambar Ali Shah v. Province of Sindh & Others

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._99_k_2018.pdf

Present:

Mr. Justice Muhammad Ali Mazhar and Mr. Justice Irfan Saadat Khan

Minute examination of a case and conducting a fact-finding exercise is not included in the functions of a Justice of Peace and the fact-finding observations of High Court is beyond the scope of its jurisdiction under Section 561-A, Cr.P.C.

The petitioner appealed to the apex court against the decision of Sindh High Court which set aside the order

of justice of peace for registration of FIR.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, clarified the role of the Justice of Peace under Section 22-A of the Criminal Procedure Code (Cr.P.C.) in Pakistan. The Justice of Peace is not to conduct a detailed investigation or render findings on the merits of a case but is to determine whether the facts narrated in an application make out a cognizable case. If so, the Justice of Peace can direct that the statement of complainant be recorded under Section 154, Cr.P.C. The court clarified that the powers of Justice of Peace are to aid and assist in the administration of the criminal justice system and to address grievances of complainants who have been refused by the police to register their reports.

The judgment also outlines the procedures under Sections 154 and 155 of the Cr.P.C. for cognizable and non-cognizable offences, respectively. It states that an Officer Incharge of a Police Station is not authorized to assess the truthfulness of information before recording an FIR; rather, they are obligated to record the information if it pertains to a cognizable offence.

The judgment criticizes the High Court for making fact-finding observations that affected the merits of the case, which was beyond the scope of its jurisdiction under Section 561-A, Cr.P.C. The inherent jurisdiction under Section 561-A is not an alternative or additional jurisdiction and should not be used to disrupt the procedural law.

The court further discusses the investigative process and the duty of the police to conduct impartial investigations. It mentions the "A", "B", and "C" class reports under Section 173, Cr.P.C., which classify the nature of the FIR and the outcome of the investigation. Consequently, the order of High court was set aside with direction to the S.H.O. to implement the order of the Justice of Peace.

25. Pakistan Engineering Council etc v. Muhammad Sadiq & others

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1471_2013.pdf

Present:

Mr. Justice Qazi Faez Isa, CJ, **Mr. Justice Muhammad Ali Mazhar** and Ms. Justice Musarrat Hilali

Degree of B.Tech. (Hons.) is not equivalent to B.E. degree but both are two distinct disciplines of knowledge in the field of Engineering and Technology with distinct syllabi and programme objectives but may be treated at par for recruitment, pay scales and grades. B.E. is more knowledge based while B.Tech. is skill-oriented.

The petitioners approached the apex court of Pakistan and challenged decisions of Peshawar High Court and Lahore High court. These appeals involve the question of whether a B.Tech. (Hons.) degree is considered equivalent to a B.Sc. Engineering degree for the purposes of admission to higher education and professional registration, as well as for promotion within engineering cadres.

Mr. Justice Muhammad Ali Mazhar, speaking for the bench, observed that degree of Bachelor of

Technology (B.Tech. Hons.) is not equivalent to the degree of Bachelor of Science in Engineering (B.E./B.Sc. Engineering). The Court clarified that both degrees are distinct disciplines of knowledge in the field of Engineering and Technology with different syllabi and program objectives. However, the Court also stated that B.Tech. (Hons.) may be treated at par with B.E./B.Sc. Engineering degree holders for the purposes of recruitment, pay scales, and grades in their respective cadres/streams. The Court emphasized that the Pakistan Engineering Council (PEC) is the body responsible for the accreditation and registration of engineering qualifications and professionals, and it has consistently expressed that engineering and technology qualifications are two distinct streams. The Court also noted that international accords, such as the Washington Accord and the Sydney Accord, recognize the distinction between engineering and engineering technology qualifications. Furthermore, the Court mentioned that the Higher Education Commission (HEC) has the mandate to determine the equivalence of degrees for educational purposes, but it cannot encroach upon the domain of the PEC regarding professional accreditation and equivalence. The Court also referred to the establishment of the National Technology Council (NTC) for the accreditation and registration of Engineering Technologists, which further supports the distinction between the two qualifications. The court also clarified that the employer may prescribe required qualifications and the preference for appointment of candidate who is best suited to his requirements. The court cannot set down the guidelines or conditions of eligibility or fitness for appointment or promotion to any particular post. The essential qualification for appointment to any post is the sole discretion and decision of the employer. In conclusion, the Supreme Court allowed Civil Appeal No. 1471 of 2013 and Civil Appeals Nos. 187 to 191 of 2018, setting aside the impugned judgments of the High Courts that had treated B.Tech. (Hons.) as equivalent to B.E./B.Sc. Engineering for certain purposes. The Court dismissed Civil Appeal No. 53 of 2014, upholding the High Court's decision that the B.Tech. (Hons.) degree is not equivalent to the B.E./B.Sc. Engineering degree for the purpose of registration with the PEC.

26. Babar Anwar v. Muhammad Ashraf & Others

https://www.supremecourt.gov.pk/downloads_judgements/c.p._5972_2021.pdf

Present:

Mr. Justice Qazi Faez Isa, CJ, **Mr. Justice Muhammad Ali Mazhar** and Ms. Justice Musarrat Hilali.

A gift is always based on love or affection, and this feeling must originate directly from the actual owner of the property. An attorney having general power of attorney cannot make gift but with explicit permission only.

The petitioner approached the apex court of Pakistan to appeal against the order of the High Court, which dismissed his revision and upheld the judgments of the lower courts

whereby the gift deed was cancelled in his favor.

Mr. Justice Muhammad Ali Mazhar, representing the bench, examined the principles guiding the validity of gift deeds under Muslim law and the restrictions on the powers of an attorney in transfer of properties. The essential conditions required for a donor that he must be of sound mind (compos mentis), meaning he has the mental capacity to understand the legal implications of making a gift. He must be of legal age and the actual owner of the property intended to be gifted. The property being gifted must exist at the time of making the hiba (gift).The use of the property being gifted must be lawful under Shariah (Islamic law).The donor must act without any coercion, duress, or undue influence while making the gift. The gifted property must come into the possession of the donee, or the donee's representative/guardian, to effectuate a valid Hiba. He must divest themselves of dominion and ownership over the property and express a clear and distinct intention to transfer ownership to the donee. The donee must accept the gift, either implicitly or explicitly. There must be delivery of possession of the property to the donee, either actually or constructively, to complete the gift. The court also point out that the emotional consideration of love or affection must stem from the actual owner (the donor) who intends to gift it to another (the donee). If an agent (like a power of attorney holder) tries to make a gift based on their own feelings of love or affection, it is legally invalid because these emotions cannot be attributed to the principal (the true owner) who is not initiating the gift. The law mandates that the intention to gift and the associated emotional consideration must come directly from the principal, not the agent acting on their behalf. This is because the agent lacks the legal authority to transfer property ownership based on their emotions; they can only operate within the granted authority of principal. The Court found that the general attorney did not seek permission or consent from respondent No.1 before gifting the property to the petitioner via a gift deed. The Court reiterated the established legal principle that an attorney cannot transfer property to themselves or close relations without the explicit permission of principal. Furthermore, the Court ruled that a mere general power of attorney is insufficient to gift the property of principal; explicit permission and instructions are necessary. Consequently, the Supreme Court dismissed the Civil Petition, denied leave, upheld the decisions of lower courts, and reinforced the legal prerequisites for valid gift deeds and the limitations on powers of attorney.

27. Raja Tanveer Safdar v. Mrs. Tehmina Yasmeen & Others

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3644_2020.pdf

Present:
Mr. Justice Munib Akhtar, **Mrs. Justice Ayesha A. Malik**, Mr. Justice Shahid Waheed.

If the proceedings are different in substance and law then it will not be a case of double jeopardy.

Speaking for the Bench, **Hon'ble Mrs. Justice Ayesha A. Malik** observed that the principle of double

jeopardy prevents a person from being prosecuted or punished more than once for the same offence. Double jeopardy applies when the same set of facts leads to a conviction for the same offence, and a second trial would require the same evidence before the court. The Court found that the actions taken against the petitioner under the Protection against Harassment of Women at the Workplace Act, 2010, Defamation Ordinance, 2002, and Punjab Employees Efficiency, Discipline and Accountability Act, 2006 were based on different causes of action and had distinct penal consequences. Therefore, convictions under these laws do not bar convictions under the others, as they operate within their own domains for specific purposes. The Apex Court differentiated between defamation, which involves harm to a person's reputation, and harassment, which is a violation of the right to dignity and involves creating an intimidating, hostile, or offensive work environment. The Court emphasized that the objectives of the 2010 Act are to uphold and protect the dignity of employees at the workplace. It was further observed that the factual findings by the Ombudsperson and the Governor Punjab, as forums of fact, are final and cannot be challenged before the High Court in its constitutional jurisdiction as a second appeal on facts. The High Court can only interfere if there is a jurisdictional defect, error, or procedural impropriety in the fact-finding forum.

28. Muhammad Imran v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._725_2023.pdf

Present:
Mr. Justice Jamal Khan Mandokhail, **Mrs. Justice Ayesha A. Malik**, Mr. Justice Malik Shahzad Ahmad Khan.

Gender stereotyping should not undermine the rule of law or the right to fair trial.

Speaking for herself in a dissenting note, **Hon'ble Mrs. Justice Ayesha A. Malik** observed that DNA evidence is considered the gold standard in establishing the identity of an accused in rape cases due to its accuracy and conclusiveness. Similarly, the solitary statement of the victim can be sufficient to award a conviction in a rape case, if it is trustworthy, consistent, and reliable. It was noted that the absence of visible marks of violence or physical resistance does not negate the occurrence of rape. Thus, different individuals may react differently to trauma. Moreover, the victim's character or sexual history is irrelevant in determining the occurrence of rape. It was further observed that for a conviction under Section 496-B of the PPC, which deals with fornication, consent must be unequivocally established. Consent is a voluntary agreement communicated by the woman through words, gestures, or any form of communication. The offense of rape is non-compoundable, meaning it cannot be legally settled between the parties, and any affidavit or statement by the complainant expressing no objection to the acquittal of the accused is irrelevant. Likewise, gender

stereotyping should not undermine the rule of law or the rights of women to a fair trial. Stereotypical standards imposed on women to establish rape, such as the expectation of physical resistance, are rejected. It is due to this reason that Pakistan's obligations under international conventions like CEDAW require the elimination of discrimination against women and the eradication of gender-based violence. It was also noted that rape violates the constitutional rights to life, dignity, and privacy. Therefore, the state is responsible for protecting women from crimes and gender stereotyping that undermines their fundamental rights. (Mr. Justice Malik Shahzad Ahmad Khan, wrote the majority judgment)

29. *Muhammad Ramzan v. Khizar Hayat & another*

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._887_l_2013_24042024.pdf

Present:

Mr. Justice Muhammad Ali Mazhar, **Mrs. Justice Ayesha A. Malik**, Mr. Justice Irfan Saadat Khan.

i) The use of forensic science by the investigating agency is essential for effective and efficient prosecution. The tendency to rely on outdated investigative methods places a big question mark on the effectiveness of the criminal justice system.

ii) The right to fair trial requires that accused must be treated equitably during investigation and prosecution.

Speaking for the Bench, **Hon'ble Mrs. Justice Ayesha A. Malik** noted that the testimony of eyewitnesses, especially those closely related to the victim, must be scrutinized with care and caution. Contradictions and discrepancies in their accounts can dilute the prosecution's story and create reasonable doubt. It was observed that the testimony of interested witnesses should be corroborated by independent evidence. Capital punishment cannot be based solely on the testimony of interested witnesses without corroboration. The Apex Court emphasized the importance of forensic science in the criminal justice system. Proper management of the crime scene and reliance on scientific evidence are crucial for establishing the facts of a case. Hence, the effectiveness of the criminal justice system is contingent upon the investigative agency's use of scientific methods. The agency must be trained in forensic science and separate investigative functions from other police duties. It was further noted that the accused is presumed innocent until proven guilty, and the prosecution bears the burden of proving guilt beyond a reasonable doubt. Thus, in such scenario accused will be entitled to the benefit of the doubt as a matter of right, not as a concession. It is the duty of prosecution to establish a sound and reasonable motive for the crime. Any such delay in acting on a supposed motive can undermine the credibility of the prosecution's theory. Similarly, the recovery of the alleged murder weapon without forensic analysis does not contribute to establishing it as the weapon used in the crime. The investigation should include forensic analysis to link the weapon to the crime.

The principle of fair trial and due process under Article 10A of the Constitution mandates that the accused be treated equitably during investigation and prosecution. The court called for the investigating agency to recognize flaws in its methodology and work towards specializing its investigative functions to improve the criminal justice system's reliability.

30. *In the matter of letter dated 25th March 2024 of the Six Judges of the Islamabad High Court and another v. Federation of Pakistan through Secretary, M/o Law and Justice, Islamabad and another.*

httpshttps://www.supremecourt.gov.pk/downloads_judgements/s.m.c._1_2024_an.pdf

Present:

Mr. Justice Athar Minallah

Whether the Prime Minister can be called on the administrative or judicial side and whether the constitution of a Commission by the Executive under the Pakistan Commissions of Inquiry Act, 2017, breaches the judiciary's independence?

Brief facts of the case are that six Judges of the Islamabad High Court wrote a letter dated 25 March 2024, which was received on 26 March 2024, ('the Letter'). The Letter was addressed to the Chairman and the Members of the Supreme Judicial Council ('SJC') and was copied to all the Judges of the Supreme Court and the Registrar of the Supreme Court, who also acts as the Secretary of the SJC. In view of the seriousness of the issues raised in the Letter the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023 decided on Monday, 1 April 2024 that the Supreme Court may consider the matter under Article 184(3) of the Constitution of the Islamic Republic of Pakistan ('the Constitution') and a bench comprising 'all available Judges at the principal seat, Islamabad may be constituted accordingly.

Hon'ble Mr. Justice Athar Minallah (one of the members of the Bench) in his separate note, who being not persuaded to endorse with parts of a court order dated on April 4, 2024, paragraphs 1 to 12, highlighting unresolved issues requiring the full Court's consideration. These issues include whether the Prime Minister can be called on the administrative or judicial side and whether the executive's constitution of a commission under the Pakistan Commissions of Inquiry Act, 2017, breaches the judiciary's independence.

Mr. Justice Athar Minallah observed that in Air Marshal Asghar Khan's case (M.Asghar Khan v. Mirza Aslam Baig (PLD 2013 SC 1) the factual aspects were determined by this Court on the basis of affidavits while in Dharna case (Suo Motu action regarding Islamabad-Rawalpindi Sit in/Dharna (PLD 2019 SC 318) credible print media reports and other material placed on record were relied upon. This crucial aspect has yet to be considered by the full Court in these proceedings. The judges are not complainants but they had solicited advice and guidance. Nonetheless, they have referred to instances of intimidation

and interference. The onus is on the State and the executive to demonstrably satisfy the full Court that there has been no interference nor attempt to manipulate judicial proceedings in specific 'politically consequential matters.

Mr. Justice Minallah emphasized the grave interference in judicial proceedings and intimidation of judges by the executive, citing a letter from six Islamabad High Court judges. The letter detailed such instances, seeking guidance due to a lack of institutional response. Mr. Justice Minallah noted that the normalization of interference and manipulation in judicial matters, especially politically significant ones, has eroded judicial independence and public trust in the judiciary. He asserted that the executive's premature constitution of a commission could breach judicial independence and emphasized the need for the full Court to address these issues to safeguard fundamental rights and the independence of judiciary. The responsibility lies with the Federal Government to prove no interference or manipulation occurred.

31. Islamic Republic of Pakistan through Secretary, Ministry of Law and Justice, Govt. of Pakistan, Islamabad v. Imran Ahmad Khan Niazi and another

https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._2_2023_30052024_an.pdf

Present:

Mr. Justice Athar Minallah

Live streaming of the proceedings should not be discontinued and by doing so, the principles enunciated by a larger Bench of this Court were breached and the right, inter alia, guaranteed under Article 19-A of the Constitution of the Islamic Republic of Pakistan, 1973 was violated.

Briefly, the respondent, Imran Ahmed Khan Niazi, the founder and leader of the Pakistan Tehrik-e-Insaaf party, is currently incarcerated in Central Prison, Adiala. He challenged the amendments to the National Accountability Ordinance, 1999. The Supreme Court, using its jurisdiction under Article 184(3) of the Constitution of Pakistan, heard his petition and, by a majority of 2 to 1, declared the amendments ultra vires. The ongoing appeal is a continuation of these proceedings. The Court allowed the respondent to argue the matter, and he made his first appearance on 16.05.2024. On that date, live streaming of the proceedings was discontinued without a formal order from the Bench. Moreover, the principles enunciated by a larger Bench of this Court in Justice Qazi Faez Isa's case (Justice Qazi Faez Isa and others v. President of Pakistan and others (PLD 2023 SC 661) declared access of the public to the court proceedings in all cases in matters of public importance through live streaming as a recognized fundamental right guaranteed under Article 19-A of the Constitution.

Mr. Justice Attar Minallah, in a separate note, while responding to the main question before the Court observed that cases heard under Article 184(3) of the Constitution, which involve matters of public importance, inherently warrant

public access to court proceedings through live streaming, as guaranteed under Article 19-A of the Constitution. The discretion to order live streaming or not must align with this right and can only be lawfully and justifiably denied in exceptional circumstances and for compelling reasons. Once live streaming has commenced, it can only be discontinued if the Court finds a substantial reason in the public interest. The appeal in question arises from proceedings under Article 184(3) and thus qualifies as a matter of public importance, with no substantive reason to deny live streaming. Denying this right would violate principles established in the Justice Qazi Faez Isa case. Consequently, the Court ordered the application for live streaming to be allowed, ensuring public access to the proceedings.

32. *Muhammad Yousaf v. Huma Saeed and others*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._2673_2022.pdf

Present:

Mr. Justice Athar Minallah, Mr. Justice Amin-ud-Din Khan

Any ambiguity in Nikah Nama must be resolved in favour of wife particularly when there is no evidence that she was informed and consented freely to the terms.

The petitioner challenged the order of the High Court invoking the jurisdiction of the Supreme Court. Pithily, petitioner and respondent were married on 05.05.2014. The marriage, being petitioner's second, was registered under the Muslim Family Laws Ordinance, 1961. The marriage ended in divorce on 18.10.2014. Respondent filed a suit for recovery of dower, maintenance, dowry articles, and gold ornaments, which led to litigation concerning the interpretation of a plot mentioned in column 17 of the Nikah Nama by the High Court resulting in decision in favour of the Respondent.

Hon'ble Mr.Justice Athar Minallah speaking for the bench observed in response to the interpretation of ambiguous terms in a Nikah Nama by emphasizing the need to ascertain the true intent of the parties involved. The Court held that any ambiguity should be resolved in favor of the wife, particularly when there is no evidence that she was informed and consented freely to the terms. In the same vein, the honorable judge noted that the rule of "contra proferentem", known as the rule of interpretation against the draftsman, is a recognized principle of contractual interpretation which provides that in case of an ambiguous promise, agreement or term, the preferred construction should be the one that works against the interests of the party which had drafted the contract.

The Court reiterated that a Nikah Nama is a civil contract, and the headings or columns in the document are not conclusive in determining the parties' intent. The judgment affirmed that the plot described in column 17 of the Nikah Nama was part of the dower, dismissing the petitioner's claim that it was meant solely for constructing a house during the marriage. Additionally, the Court reiterated that a Nikah Nama is a civil

contract, and the terms and conditions therein must be interpreted to ascertain the true intent of the parties. Whereas, to the extent of question of plot mentioned in column No.17 of the Nikah Nama it is found that the description of the plot in column 17 did not indicate any condition that it was only for the duration of the marriage. Likewise, accepting the stance of the petitioner would amount to reading in the Nikah Nama something not provided therein. The courts cannot construe the Nikah Nama and its entries as having the effect of applying a stipulation not expressly provided therein. Consequently, no case is made out for grant of leave and, hence, the petition is accordingly dismissed.

33. *Tariq Zubair Khan v. Mst. Tabassum Khan and others*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._4194_2023.pdf

Present:

Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan

The objections to auction of immovable property, conducted to satisfy the execution of a decree, must be made under Order XXI, Rules 89 or 90 of the CPC.

This Civil Petition was filed by petitioner against an order passed by the Islamabad High Court, which dismissed his First Appeal. The case pertains to a dispute over the partition and sale of inherited property among siblings. The trial court had ordered the auction of a house, and the petitioner filed objections to the auctioneer's report but failed to deposit the required 20% of the auction sum, leading to the dismissal of his objections. His subsequent appeal to the High Court was also dismissed, prompting the present petition to the Supreme Court.

Hon'ble Mr. Justice Syed Hasan Azhar Rizvi, speaking for the Bench maintained that it is significant to understand the scheme provided for sale of an immovable property to satisfy the execution of decree under the CPC. Order XXI CPC itself is an exhaustive order and provides a comprehensive mechanism regarding the execution of the decree. For the satisfaction of the decree by the sale of suit property, Court issues a proclamation of sales through public auction in accordance with provisions of Order XXI, rule 66 of CPC. Eventually, the court decides the mode of making the proclamation to comply with provisions of Order XXI, rule 67 of CPC. The next stage in sale through public auction is the deposit of twenty-five percent of the amount of purchase money followed by the full amount of purchase money on the fifteenth day from the sale of the property to satisfy the requirements of Order XXI, rules 84 and 85 respectively. Any person aggrieved of auction proceedings may make an application under rules 90 or 91 for setting aside the sale on the grounds of irregularity or fraud.

Hon'ble Judge further observed that, sale may be set aside on the grounds of material irregularity or fraud under Order XXI, Rule 90 CPC wherein the applicant has to establish substantial injury sustained by him owing to such material irregularity or fraud in the sale by public auction. Additionally, applicant has to comply with the

second proviso to this rule by depositing twenty percent of the sum realized at the sale. The rationale behind the second proviso is to discourage the frivolous objections frustrating the execution of the decree.

The Court, after reviewing the case, found that the petitioner's objections were not maintainable under Order XXI, Rule 84 of the Code of Civil Procedure (CPC), as he was not the purchaser but a legal heir. The Court noted that objections to auction proceedings should be made under Order XXI, Rules 89 or 90, which the petitioner failed to do.

The Court found that the trial court correctly treated the petitioner's objections as an application under Order XXI, Rule 90 CPC, which requires the applicant to deposit 20% of the auction sum to set aside the sale on grounds of material irregularity or fraud. The petitioner failed to deposit the required amount and did not seek an extension or express willingness to do so. The Court agreed with the concurrent findings of the lower courts and dismissed the petition, refusing leave to appeal.

34. Khial Muhammad v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.a._36_2023.pdf

Present:

Mr. Justice Jamal Khan Mandokhail, **Mr. Justice Syed Hasan Azhar Rizvi,** Mr. Justice Naeem Akhtar Afghan

Prosecution must prove its case beyond any reasonable doubt, and any doubt should be resolved in favor of the accused. It is better to let off many guilty persons than to punish one innocent person.

In this case, the appellant was convicted and sentenced to death by the Additional Sessions Judge, Pishin, for the murder punishable under Section 302 of the Pakistan Penal Code (PPC). The appellant was also directed to pay compensation to the legal heirs of the deceased. The High Court of Balochistan upheld the conviction and sentence, and the appellant subsequently sought leave to appeal to the Supreme Court, which was granted.

The Court, upon reviewing the case, found several discrepancies and delays in the prosecution's case, including the delayed FIR, the recording of eyewitness statements, and the submission of forensic evidence.

Hon'ble Mr. Justice Syed Hasan Azhar Rizvi, speaking on behalf of the Bench observed that mere heinousness of the offence, if not proved to the hilt, is not a ground to punish an accused. It is an established principle of law and equity that it is better to let off hundred guilty persons than to punish one innocent person. The peculiar facts and circumstances of the present case are sufficient to cast a shadow of doubt on the prosecution case, which entitles the appellant to the right of benefit of the doubt.

It is a well settled principle of law that for the accused to be afforded this right of benefit of doubt, it is necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. Consequently, the

Court allowed the appeal, set aside the judgments of the trial Court and the High Court, and acquitted the appellant of the charge.

35. Chanzeb Akhtar v. The State & Others

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._548_2020.pdf

Present:

Mr. Justice Jamal Khan Mandokhail, **Mr. Justice Syed Hasan Azhar Rizvi,** Mr. Justice Naeem Akhtar Afghan

Absence of a proven motive could be considered a mitigating factor in reducing the sentence from death to life imprisonment

The criminal petitions were filed against the judgment of the Islamabad High Court, whereby the petitioner was convicted under Section 302(b) of the Pakistan Penal Code (PPC) and sentenced to death, along with a compensation payment and fine by the trial court. The High Court dismissed his appeals but converted the death sentence to life imprisonment. The petitioner sought leave to appeal against this decision.

The case involved the murder of the petitioner's wife, using a .30 bore pistol. The petitioner surrendered and the weapon was recovered. The prosecution relied on 16 prosecution witnesses and two court witnesses. The petitioner claimed innocence and did not produce any defense evidence.

Hon'ble Mr. Justice Syed Hasan Azhar Rizvi, speaking on behalf of the Bench observed that it is well settled proposition of law that in the absence of premeditation to commit murder where motive is not proved by the prosecution, the same may be considered as the mitigating factor in order to reduce the quantum of sentence in cases involving capital punishment.

The Court, after reviewing the evidence and hearing the parties, found that the prosecution had established its case beyond reasonable doubt. The Court agreed with the High Court's decision to convert the death sentence to life imprisonment, finding no infirmity or illegality in the impugned judgment. Consequently, the petition for leave to appeal was dismissed, and the petition seeking enhancement was also dismissed.

36. The State through A.N.F., Rawalpindi v. Obaid Khan (decd) through LRs & others

https://www.supremecourt.gov.pk/downloads_judgements/c.a._277_2014.pdf

Present:

Mr. Justice Munib Akhtar, **Mr. Justice Shahid Waheed**, Ms. Justice Musarrat Hilali

Interpretation of "person aggrieved" and right to appeal under Section 43 of the Prevention of Smuggling Act, 1977

The Anti-Narcotics Force (ANF) filed a petition challenging the judgment of the Special Appellate Court, which had dismissed an appeal by the ANF on the grounds that it was not a "person aggrieved" under Section 43 of the Prevention of Smuggling Act, 1977. The ANF had informed the Special Judge in Peshawar about properties allegedly acquired through smuggling by the accused. The Special Judge ordered the

https://www.supremecourt.gov.pk/downloads_judgements/const.p._6_2023_an_07052024.pdf

forfeiture of some properties to the Federal Government, while others were deemed legitimately acquired and were not forfeited. The ANF appealed the decision to forfeit only part of the properties, but the appeal was dismissed, and the High Court upheld the dismissal, ruling that the ANF did not have the standing to appeal as it was not a "person aggrieved" by the Special Judge's order.

Hon'ble Mr. Justice Shahid Waheed, speaking on behalf of the bench observed that a "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something. The Anti Narcotic Force could not be described as a person aggrieved rather as a person annoyed at best, and so, was not entitled to prefer an appeal against the Special Judge's order under section 43 of the Act.

The Court reviewed the case, focusing on the interpretation of the term "person aggrieved." The Court held that the ANF, having provided the initial information but not being required to further participate in the proceedings or prove the allegations, could not be considered a person aggrieved. The right to appeal under Section 43 was intended for individuals whose legal rights were directly affected by the Special Judge's order, which did not include the ANF. Consequently, the Supreme Court dismissed the appeal.

37. Raja Amer Khan v. Federation of Pakistan

Present:

Mr. Qazi Faez Isa, CJ, Mr. Justice Sardar Tariq Masood, Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi**, Justice Shahid Waheed**, Ms. Justice Musarrat Hilali

PAPA-2023 undermines the independence of the judiciary and the maintenance of the trichotomy of powers as embedded in the Constitution

In this dissenting opinion the Hon'ble Judge disagreed with the majority of the Court regarding the upholding of the Supreme Court (Practice and Procedure) Act, 2023 (PAPA), except for section 5(2). He emphasized the importance of recording his dissent due to the significant constitutional implications of the majority's decision. Hon'ble Judge adopted the account of arguments presented by Hon'ble Mrs. Justice Ayesha A. Malik and agreed that the petitions challenging PAPA are within the law.

Hon'ble Mr. Justice Shahid Waheed outlines the petitions' challenge to PAPA on the grounds of legislative competence and potential infringement on the Court's

independence. He refuted the Government's preliminary objection that the petitions do not enforce any fundamental rights, asserting that the petitions are maintainable under Article 184 of the Constitution, which confers original jurisdiction on the Supreme Court for cases of public importance concerning the enforcement of fundamental rights.

Hon'ble Judge further discussed the three-stage requirement for the Supreme Court to take cognizance of a matter under Article 184(3) and concluded that the petitions satisfy all three stages. He then examined the competence of Parliament to enact PAPA, analyzing Articles 175(2) and 191 of the Constitution. He concluded that neither provision confers power on Parliament to enact PAPA.

Hon'ble Judge also addressed the argument that the right of appeal against the Constitutional jurisdiction of Article 204 was conferred through ordinary legislation, finding the argument ill-founded. He emphasized the importance of preserving the trichotomy of powers and the independence of the judiciary, stating that the PAPA disrupts this fundamental structure.

He scrutinized the material provisions of PAPA 2023, concluding that they impede the independence and efficiency of the Supreme Court rather than bolstering them. Hon'ble Judge found sections 2, 3, and 4 of PAPA problematic for various reasons, including their impact on the administration of justice and the contradiction between sections 3 and 4.

Honb'le Judge declared PAPA to be ultra vires the Constitution, allowed the petitions and provided his reasons for the short order dated 11th of October, 2023.

38. Mst. Sehat Bibi d/o late Daulat Khan v. Bahar Khan s/o late Daulat Khan,etc.

https://www.supremecourt.gov.pk/downloads_judgements/c.a._26_q_2017.pdf

Present:

Mr. Justice Shahid Waheed and **Ms. Justice Musarrat Hilali.**

Upon the demise of a property owner, the inheritance rights of all legal heirs, including female heirs, are immediately vested and protected against fraudulent exclusion.

This Civil appeal, under Article 185 (2) (e) of the Constitution has been filed by the appellant Mst. Sehat Bibi, against the judgment and decree dated 06.10.2017 passed by the High Court of Baluchistan by challenging a dispute over inheritance and the illegal transfer of agricultural property. The appellant contested that the High Court's judgment granted her a 1/3 share of the sale price of the property sold by her brother Respondent No.1, rather than a 1/3 share in the actual property left by their late father, Daulat Khan.
The question arises before this Court whether the appellant being co-sharer was entitled to receive 1/3rd share from the legacy of her father instead of receiving 1/3rd share in the sale proceeds? The court answers this question in affirmative.

Hon'ble Justice Musarrat Hilali, speaking for the bench observed

that according to the Muslim Law, on the demise of Daulat Khan, the appellant was entitled to get 1/3 rd share out of the entire property of her late father but the revenue officials illegally, fraudulently and dishonestly deprived the her from her legal share by mutating the entire property in favour of Bahar Khan, Respondent No.l. The High Court, while setting aside the judgments and decrees of the Trial Court and the Appellate Court, completely failed to apply the law and granted only 1/3rd share out of the sale price of Rs. 13,00,000/- to the appellant. The grant of 1/3rd share out of the sale price and exclusion of the appellant from the inheritance was against the law. The Supreme Court held that the appellant was entitled to 1/3rd share out of the entire property of her late father. The Court cancelled all subsequent mutations attested on the basis of said inheritance mutation and held that any superstructure built on weak foundation is not sustainable.

39. Muhammad Aslam and others v. Molvi Muhammad Ishaq and others

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1429_2014.pdf

Present:

Justice Qazi Faez Isa CJ, **Justice Irfaan Sadaat Khan** and Justice Naeem Akhtar Afghan

Principles/guidelines to disturb Concurrent findings of the lower Courts highlighted.

In this judgment, **the Hon'ble Justice Irfan Sadaat Khan** speaking for the bench ruled that usually concurrent findings of the lower Courts are not to be disturbed and interfered with but in cases where such findings are found to be erroneous and perverse, they are liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence and are a result of miscarriage of justice. That the findings arrived at by the fora below were erroneous, especially in view of the sanctity attached to the compromise entered before a Judge of the High Court, and therefore not disturbing the concurrent findings of the fora below would amount to a grave miscarriage of justice".

40. Mst. Iqbal Bibi and others v. Kareem Hussain Shah and others

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1229_2018.pdf

Present:

Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed and **Mr. Justice Irfan Saadat Khan**

Overturn the concurrent findings due to limitation error floating on the surface of the record.

Hon'ble Justice Irfan Saadat Khan speaking for the bench ruled, "Since, the suit instituted before the Civil Judge was hopelessly barred by time, any relief acquired by the respondents through the decree of that suit, in our view, cannot stand. Though this Court has always exercised restraint and caution, when it comes to concurrent finding... Since the error, vis-à-vis limitation, is floating on the surface of the record and is so apparent, it is surprising that the High Court did not interfere with the concurrent

findings in its revisional jurisdiction rather they found it fit to extend the period of limitation by linking it to new jamabandis. It is also interesting to note that the decision upon which the High Court has placed reliance support the stance of the appellants rather than that of the respondents. Hence on these facts, we have no option but to interfere with the concurrent findings of the fora below as these findings are patently improbable, perverse, and based on misreading of the law"

41. *Sardaran Bibi v. The State & Others*

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._412_l_2014.pdf

Present:

Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik and **Mr. Justice Irfan Saadat Khan**

Principle of Benefit of Doubt: A Right, Not a Concession

In this judgment, **Hon'ble Justice Irfan Sadaat Khan** speaking for the bench ruled tha the principle of "benefit of the doubt" is a fundamental aspect of legal systems, deeply embedded in judicial practice. It asserts that if any reasonable doubt exists about an accused person's guilt, they are entitled to benefit from that doubt. This entitlement is not a matter of grace but a right. Even a single circumstance that casts doubt on the prosecution's case must result in the accused receiving the benefit of that doubt.

42. *Mst. Uzma Mukhtar v. The State thr. Deputy Attorney General and Another.*

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._128_2024.pdf

Present:

Justice Jamal Khan Mandokhail, Justice Syed Hasan Azhar Rizvi and **Justice Naeem Akhtar Afghan**

No law shall authorize the punishment of a person for an act or omission that was not punishable by law at the time of the act or omission.

Initially, F.I.R was registered against the respondent u/s 36 and 37 of Electronic Transactions Ordinance (ETO) 2002 read with section 500, 506 and 509 of Pakistan Penal Code (PPC). Later on, the petitioner submitted an application u/s 227 Cr.P.C. for altering the charge and to read over charge to respondent No.2 u/s 20, 21 and 24 of Prevention of Electronic Crimes Act (PECA) 2016, instead of above stated offences. Same application was dismissed by the trial court on merits and in limine by the High Court. Hence, leave to appeal.

Hon'ble Justice Naeem Akhtar Afghan speaking for the Court held while providing protection against retrospective punishment, Article 12 of the Constitution of the Islamic Republic of Pakistan, 1973 lays down that no law shall authorize the punishment of a person for an act or omission that was not punishable by law at the time of the act or omission. In this case, it is discussed that the assent of the President of Pakistan was received on 18.08.2016 for promulgation of PECA 2016 and notification dated 19.08.2016 was published in the Gazette of Pakistan on 22.08.2016. The offences mentioned by the petitioner in her application dated 03.08.2016 were allegedly committed by respondent No.2 since the last year i.e. much prior to

promulgation of PECA 2016. Thus, leave to appeal stands refused.

43. Abdul Qadeer v. The State

https://www.supremecourt.gov.pk/downloads_judgements/j.p._238_2008_r.pdf

Present:

Justice Syed Hasan Azhar Rizvi, Justice Musarrat Hilali and **Justice Naeem Akhtar Afghan**

Even if a single circumstance creates a reasonable doubt in a prudent mind about the guilt of an accused, he/she shall be entitled to such benefit not as a matter of grace and concession but as of right.

In this case, the petitioner was sentenced for imprisonment for life and forfeiture of property for commission of offence under section 365-A/34 PPC r/w section 7(e) of the Anti-Terrorism Act, 1997 by the trial court. His sentence was maintained by the High Court. Thus, he filed this jail petition.

Hon'ble Justice Naeem Akhtar Afghan while speaking for the court acquitted the convict from the above said charge. It is discussed by the court that no Call Data Record ('CDR') with regard to the alleged phone calls made by the accused for ransom has been produced at the trial, the inordinate delay of two days in registration of F.I.R is not explained, the complainant and prosecution witnesses made improvements during their evidence which is not warranted by law, no bank record is produced. Most importantly, the ID parade is conducted according to law; the complainant has not assigned any role to the accused. All these circumstances shed doubt in the story of prosecution which ultimately benefits the accused/convict.

44. Riasat Ali and Fakhar Zaman v. The State & Another

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._708_l_2018.pdf

Present:

Justice Syed Hasan Azhar Rizvi, Justice Musarrat Hilali and **Justice Naeem Akhtar Afghan**

Discrepancies in the case of prosecution must favour the accused person.

This petition is filed by the petitioners against the order of the High Court whereby the conviction of the petitioners was maintained and sentence was converted from death into imprisonment of life. Meanwhile, during pendency of this petition, legal heirs of one of the deceased entered into compromise and both petitioners acquitted from the charge of his murder. Petitioner, Riasat Ali was also charged for the murder of Asadullah Khan, therefore the instant petition to the extent of petitioner Riasat Ali for committing murder of deceased Asadullah Khan is dealt with.

Hon'ble Justice Naeem Akhtar Afghan while discussing the complete set of evidence produced by the prosecution held that "it is not believable that by killing a person in presence of his close relatives, accused would not attempt to cause any injury to the prosecution witnesses leaving them for evidence to be hanged." Adverse inference under Article 129(g) of the

Qanoon-e- Shahadat Order, 1984 is also drawn to the effect that the prosecution has not produced the witness Muhammad Nawaz who was accompanying PW-14 and the deceased at the time of occurrence. The discrepancies in evidence of prosecution like site plan not covering total area, contradiction between medical and ocular accounts regarding blackening of the wound and recovery is not properly effected are discussed and the petitioner is acquitted from the charge.

FOREIGN SUPERIOR COURTS

SUPREME COURT OF THE UNITED STATES

1. Diaz v. United States

602 U. S. ____ (2024)
[https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf]

Present:

Thomas, J., Roberts, C. J., Alito, J., Kavanaugh, J., Barrett,J., Jackson, J., Jackson, J., Gorsuch, J., Sotomayor And Kagan, J.,

Certiorari to the United States Court Of Appeals for the Ninth Circuit.

Does the testimony of an expert witness that "most drug couriers know they are transporting drugs" violate Federal Rule of Evidence 704(b), which prohibits expert witnesses from stating opinions about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense?

Thomas, J., delivered the opinion of the Court, in which Roberts, C. J., and Alito, Kavanaugh, Barrett, and Jackson, JJ., joined. Jackson, J., filed a concurring opinion. Gorsuch, J., filed a dissenting opinion, in which Sotomayor and Kagan, JJ., joined.

Delilah Diaz was stopped at a U.S.-Mexico border port of entry, where border patrol officers found over 54 pounds of methamphetamine hidden in her car. Charged with importing methamphetamine, which required proving she "knowingly" transported the drugs, Diaz claimed she was unaware of the drugs in her vehicle. The Government intended to have Homeland Security Investigations Special Agent Andrew Flood testify that drug traffickers generally do not use couriers who are unaware of their cargo. Diaz objected under Federal Rule of Evidence 704(b), which prohibits expert witnesses in criminal cases from stating opinions about whether a defendant had a mental state or condition constituting an element of the crime. The court allowed Flood to testify that most couriers are aware they are transporting drugs but barred him from stating this was always the case. At trial, Flood testified as allowed, and Diaz was found guilty. On appeal, the Ninth Circuit upheld the testimony, ruling it did not violate Rule 704(b) as Flood did not explicitly state that Diaz knowingly transported the methamphetamine.

The Supreme Court affirmed, concluding that Rule 704(b) applies narrowly to opinions about the specific defendant's mental state. Since Flood did not directly opine on Diaz's knowledge, his testimony about most couriers did not violate Rule 704(b). The Court emphasized that the jury, not the expert, determined Diaz's mental state.

Therefore, the Court held that Flood's general testimony about drug couriers did not infringe Rule 704(b).

Moreover, Mr. Justice Jackson concurred with the Court's opinion and emphasized the balance struck by Federal Rule of Evidence 704(b), which forbids expert witnesses in criminal trials from offering opinions on whether the defendant had a mental state constituting an element of the crime or defense. Rule 704(b) allows for highly probative expert testimony while ensuring the jury determines the ultimate issue of the defendant's mental state. Mr. Justice Jackson highlighted that Rule 704(b) is party-neutral, allowing both the Government and defense to introduce expert testimony on the likelihood of the defendant having a particular mental state based on their membership in a particular group. This type of mental-state evidence is crucial for both prosecutors and defendants.

Further, the Supreme Court held that the case illustrated the importance of such evidence. The Government's expert testified that most drug couriers know they are transporting drugs, while Diaz presented an automobile specialist to testify that a driver of her car would likely be unaware of hidden drugs. Both types of evidence were permissible under Rule 704(b) and could help the jury decide on the defendant's mental state.

Mr. Justice Jackson acknowledged the risks of overreliance on expert testimony, especially in criminal trials. However, she noted that safeguards exist outside Rule 704(b) to prevent misuse, including cross-examination, other evidentiary rules, and specific jury instructions to maintain the jury's role in determining the defendant's mental state. With this understanding, Justice Jackson joined the Court's opinion.

In the dissent, Mr. Justice Gorsuch, joined by Justices Sotomayor and Kagan, argues that Federal Rule of Evidence 704(b) clearly prohibits expert witnesses from offering any opinion about a defendant's mental state necessary to convict in a criminal trial. The Court's majority opinion allows prosecutors to introduce expert testimony suggesting that most people in the defendant's situation have the requisite mental state for conviction. Gorsuch contends this undermines the rule and provides prosecutors with an unfair advantage.

Additionally, Mr. Justice Gorsuch emphasizes the historical and fundamental requirement of proving mens rea (guilty mind) in criminal cases, which juries have traditionally determined based on circumstantial evidence. He criticizes the use of expert testimony to infer a defendant's mental state, arguing it infringes on the jury's role and violates Rule 704(b). He also highlights the potential for prejudicial and unreliable testimony from such experts, pointing out that juries are fully capable of evaluating a defendant's state of mind without such assistance.

The dissent further warns of the risks of allowing expert testimony about the mental states of groups, which can easily mislead jurors and undermine the fairness of trials.

Gorsuch advocates for adherence to the clear language of Rule 704(b), which reserves the determination of mens rea to the jury alone, without interference from expert opinions on the matter. Consequently, the judgment of the Court of Appeals is affirmed.

SUPREME COURT OF THE UNITED STATES

2. Chiaverini Et Al. v. City Of Napoleon, Ohio, Et Al.

602 U. S. (2024)
[https://www.supremecourt.gov/opinions/23pdf/23-50new_2co3.pdf]

Present:

Kagan, J., Sotomayor, J., Kavanaugh, J., Thomas, J., Alito, J., Gorsuch, J.,

Certiorari to the United States Court Of Appeals for the Sixth Circuit.

Whether the presence of probable cause for any one charge in a criminal proceeding categorically defeats malicious-prosecution claim relating to another baseless charge?

Mr. Justice Kagan, delivered the opinion of the court, in which roberts, C. J., and Sotomayor,J., Kavanaugh, J., Barrett, J., and Jackson, J., joined. Whereas, Thomas, J., filed a dissenting opinion, in which Alito, J., joined. Gorsuch, J., also filed a dissenting opinion.

Jascha Chiaverini, a jewelry store owner, was charged with three crimes, including two misdemeanors and a felony, and detained for three days before prosecutors dropped all charges. Believing his arrest and detention were unjustified, Chiaverini sued the officers under 42 U.S.C. §1983, claiming the charges lacked probable cause and led to an unreasonable seizure. The District Court and the Sixth Circuit Court of Appeals ruled in favour of the officers, stating that probable cause for any one charge nullified the malicious-prosecution claim for others. The Supreme Court disagreed, holding that the presence of probable cause for one charge does not categorically defeat a Fourth Amendment malicious-prosecution claim for another baseless charge, and remanded the case for further proceedings.

The Supreme Court addressed whether the presence of probable cause for one charge in a criminal proceeding categorically defeats a Fourth Amendment malicious-prosecution claim relating to another, baseless charge. The Court vacated the Sixth Circuit's judgment, which had affirmed summary judgment for the officers based on the presence of probable cause for at least one charge.

Mr. Justice Kagan, delivering the opinion of the Court, (in which Roberts, C. J., and Sotomayor, Kavanaugh, Barrett, and Kackson, JJ., joined) explained that a Fourth Amendment malicious-prosecution claim must be evaluated charge by charge, rejecting the Sixth Circuit's categorical rule that a single valid charge insulates officers from a claim based on any other baseless charges. The Supreme Court found this approach consistent with both Fourth Amendment principles and traditional common-law practices

governing malicious-prosecution suits.

Mr. Justice Thomas (in which Alito, J., joined), dissenting the majority opinion argued that a malicious-prosecution claim should not be based on the Fourth Amendment. He maintained that such claims should be evaluated under procedural due process and criticized the Court's creation of a new tort without proper constitutional grounding.

MR. Justice Gorsuch, also dissenting, emphasized that the Fourth Amendment does not address prosecutions and that claims for malicious prosecution should instead be housed under the Fourteenth Amendment's due process protections. He underscored the inconsistency between the common law and the Court's approach.

Consequently, the Supreme Court vacated the Sixth Circuit's judgment, stating that the presence of probable cause for one charge does not automatically defeat a Fourth Amendment malicious-prosecution claim for another charge that lacks probable cause. The Court remanded the case for further proceedings to address the causation issue.

SUPREME COURT OF THE UNITED STATES

3. *James E. Snyder, Petitioner v. United States*

603 U. S. (2024)
[https://www.supremecourt.gov/opinions/23pdf/23-108_8n5a.pdf]

Present:

Kavanaugh, J., Gorsuch, J., Justice Jackson, J., Sotomayor, J., Justice Kagan, J.

On Writ Of Certiorari to the United States Court of Appeals for the seventh circuit.

Whether 18 U.S.C. §666(a)(1)(B) make it a federal crime for state and local officials to accept gratuities for their past official acts, or does it solely target bribery involving corrupt intent to influence or reward official acts?

James Snyder, the former mayor of Portage, Indiana, was convicted of accepting an illegal gratuity in violation of 18 U.S.C. §666(a)(1)(B). In 2013, while mayor, Snyder facilitated the awarding of two contracts worth about $1.1 million to Great Lakes Peterbilt for purchasing trash trucks. In 2014, Peterbilt paid Snyder $13,000, which the FBI and federal prosecutors alleged was a gratuity for the contracts. Snyder contended the payment was for consulting services. The District Court sentenced Snyder to 1 year and 9 months in prison, and the Seventh Circuit affirmed his conviction. Snyder argued on appeal that §666 criminalizes only bribes and not gratuities, but his argument was rejected. The Supreme Court took up the case to clarify the distinction between bribes and gratuities under federal law.

Mr. Justice Kavanaugh delivered the opinion of the Court, addressing whether 18 U.S.C. §666(a)(1)(B) criminalizes state and local officials accepting gratuities for past official acts. The Supreme Court held that §666 is a bribery statute, not a

gratuities statute. The text of §666, its statutory history, structure, punishments, federalism principles, and the need for fair notice all support this interpretation. The term "corruptly" and the modeled language after §201(b) for federal officials underscore that §666 targets bribery, requiring a corrupt intent to be influenced or rewarded in connection with official acts. By contrast, gratuities, which are gifts given after the act as tokens of appreciation, fall under state and local regulations, not federal law. The Court reversed the Seventh Circuit's decision, clarifying that §666 do not extend to post-act gratuities. The judge also observed that §666 tracks §201(b), is the bribery provision for federal officials. A state or local official can violate §666 when he accepts an up-front payment for a future official act or agrees to a future reward for a future official act.

Mr.Justice Gorsuch, concurring, underscored the principle of lenity, highlighting that when a statute's application to specific conduct is doubtful, the rule of lenity mandates resolving the ambiguity in favour of the defendant. Justice Gorsuch, concurring, highlighted the principle of lenity, stressing that any ambiguity in a criminal statute should be resolved in favor of the defendant. The Court reversed the Seventh Circuit's decision, reinforcing that §666 do not extend to gratuities given after the official act.

However, In her dissent, Justice Jackson, joined by Mr. Justices Sotomayor and Jusitce Kagan, argued that §666 clearly covers both bribes and gratuities based on its plain text, which includes payments intended to "influence or reward." She criticized the majority for ignoring the statute's explicit language and expressed concern that the decision undermines Congress's intent to combat corruption at all levels of government. She emphasized that the statutory elements and mens rea requirement of acting "corruptly" sufficiently protect against prosecuting innocuous gifts and that Snyder's conduct clearly met the standard for corruption under §666.

Consequently, the Supreme Court reversed the judgment of the U. S. Court of Appeals for the Seventh Circuit and remanded the case for further proceedings consistent with this opinion.

UNITED KINGDOM SUPREME COURT

4. R v Surrey County Council

[2024] UKSC 20 [https://www.bailii.org/uk/cases/UKSC/2024/20.html]

Present:
Lord Justice Kitchin, Lord Justice Sales, **Lord Justice Leggatt**, Lady Justice Rose, Lord Richards, JJ.

Environmental Impact Assessment should always be interpreted as matter of law.

The Supreme Court of the United Kingdom dismissed the appeal concerning the requirement to carry out an environmental impact assessment (EIA) for a development project involving the drilling for oil. The key question was whether the public authority responsible for conducting the EIA before granting planning consent for such

development was required to assess the impact of greenhouse gas emissions resulting not just from the drilling operation itself but also from the eventual use of the oil as fuel, once it had been refined elsewhere. This depended on the proper construction of the EIA Directive and the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 which implement that Directive. The majority of the Supreme Court held that the EIA for the project failed to assess the effect on climate of the combustion of the oil to be produced, and the reasons for disregarding this effect were flawed. Therefore, the Council's decision to grant planning permission for the project was unlawful. The Court observed that the EIA Directive is intended to ensure that environmental issues related to a project are identified and considered in the decision-making process for granting planning consent. It is not designed to create a general databank about possible downstream or scope 3 effects which could not bear on what the planning authority has to do. The EIA Directive contemplates that decisions on the grant of planning consent will often be taken by local or regional authorities, not national authorities. Local planning authorities are not responsible for national climate policy and do not have the legitimacy or authority to second-guess assessments of national bodies in relation to it. The EIA Directive must be interpreted in light of the principle of proportionality, which suggests that the appellant's proposed interpretation of the Directive, arguing that all downstream or scope of the emissions are to be regarded as "indirect effects of a project", is not correct. It was further observed as regard the definition of project that the EIA Directive defines "project" as the execution of construction works or other interventions, focusing on a specific set of physical works. The relevant environmental effects both direct and indirect, of a project for EIA purposes are those "of the project". In this way, the term indirect effects' in the EIA Directive does not extend to downstream or scope of greenhouse gas emissions. The Directive focuses on the impact of the project itself, not its wider downstream effects. Moreover, the EIA Directive includes provisions for cross-border consultation but does not require the involvement of every Member State in relation to projects associated with significant downstream greenhouse gas emissions. Similarly, the Court noted that National climate objectives are set out in the Climate Change Act 2008, which accounts for all the UK's greenhouse gas emissions, including scope 3 type emissions within UK territory. Decisions regarding the distribution of greenhouse gas emissions between different sectors of the economy are matters of national policy determined by central Government. The Court found no inconsistency in the Council's approach to considering national policy on climate change and the extraction of oil while complying with its legal obligations under the EIA Directive. The Court held that the EIA Directive should be interpreted as a matter of law, rather than as determined by an assessment of whether the Council was rational or not in deciding that the downstream greenhouse gas

emissions were not “indirect effects” of the oil well project.

(Lord Kitchen and Lady Rose agreeing with Lord Leggat)

UNITED KINGDOM SUPREME COURT

5. *RTI Ltd (respondent) v MUR Shipping BV (appellant)*

[2024] UKSC 18 [https://www.bailii.org/uk/cases/UKSC/2024/18.html]

Present:
[Lord Justice Hodge, Deputy President, Lord Justice Lloyd-Jones, **Lord Justice Hamblen, Lord Justice Burrows,** Lord Justice Richards, JJ.]

Reasonable endeavors do not extend to accepting non-contractual offers.

In this case Lord Hamblen and Lord Burrows while speaking for the bench observed a force majeure clause does not obligate a party to accept non-contractual performance from another party unless the contract explicitly states so. The key issue was whether reasonable endeavours under a force majeure clause could compel a party to accept an alternative performance to overcome the effects of a force majeure event. The Court determined that without clear contractual language, reasonable endeavours do not extend to accepting non-contractual offers. It was noted that force majeure clauses typically require the invoking party to demonstrate that the event was beyond their control and could not have been mitigated by reasonable efforts. The intent of such clauses is to preserve the original contractual obligations, not to replace them with alternative arrangements. The Bench underscored the importance of freedom of contract, meaning parties are free to set their own terms, including the decision not to accept non-contractual performance unless the contract clearly specifies otherwise. It was further observed that there is need for clear wording in contracts when expecting a party to relinquish a valuable right, such as insisting on payment in a specified currency. Moreover, certainty and predictability are important in commercial law. The interpretation of reasonable endeavours should be anchored to the contract to avoid introducing unnecessary uncertainty. It was held that the decisions in *Bulman* and the *Vancouver Strikes* case implicitly support the principle that reasonable endeavours do not require a party to give up contractual rights or to accept non-contractual performance. The Court noted that duty to mitigate loss following a breach is distinct from the question of whether there has been a breach of primary obligations under the contract. The principles applicable to the assessment of damages are not the same as those determining contractual performance. The Court concluded that appellant was not required to accept respondent's offer to pay in Euros instead of the contractually agreed US dollars. The force majeure clause did not excuse appellant from insisting on its contractual right to payment in US dollars, and respondent's offer of non-contractual performance did not overcome the force majeure event. The Supreme Court's judgment reinforces the principle that the interpretation of

force majeure clauses should be closely tied to the terms of the contract and that parties are not generally expected to forego their contractual rights without explicit provisions to that effect.

(Lord Hodge, Lord Lloyd-Jones and Lord Richards agreeing with Lord Hamblen and Lord Burrows)

UNITED KINGDOM SUPREME COURT

6. *On the application of AM (Belarus)) (Respondent) v Secretary of State (Appellant)*

[2024] UKSC 13 [https://www.bailii.org/uk/cases/UKSC/2024/13.html]

Present:
[Lord Justice Lloyd-Jones, **Lord Justice Sales**, Lord Justice Hamblen, Lord Justice Stephens, Lady Justice Simler, JJ.]

Community interest should be given preference over individual interest.

The Supreme Court of UK allowed the Secretary of State's appeal, rejecting AM's claim under Article 8 of the European Convention on Human Rights (ECHR) for Leave to Remain (LTR) in the UK. AM, a foreign criminal and illegal immigrant, had successfully thwarted his deportation to Belarus through deceitful actions. The Court held that the Secretary of State was entitled to maintain AM's "limbo" status without granting LTR, as this was a proportionate measure in pursuit of legitimate aims, including maintaining effective immigration controls and focusing state resources on citizens and lawful immigrants. The Court while laying down the key principles recognized that an illegal immigrant's right to respect for private life under Article 8 is engaged when they are subject to an extended period with 'limbo' status, which restricts their ability to participate in ordinary life, including seeking employment. The Court emphasized the need for a conventional Article 8 analysis, weighing the private rights and interests of the individual against the general interest of the community. It was also observed that the public interest in promoting the effectiveness of immigration controls remains strong, even when an individual's removal is practically impossible due to their own obstructive actions. Therefore, granting LTR to an individual who has obstructed their removal would incentivize others to do the same, undermining the immigration system and public confidence in it. It was noted that when an individual contributes to their situation by obstructing removal, the state's responsibility is diminished, and the fair balance between public and individual interests may involve protecting the individual from destitution while not granting full benefits associated with LTR. In this way, the state has a margin of appreciation in deciding how to treat immigrants in relation to respecting their private and family lives, and that the level of welfare and other support provided is a matter for the state's decision. The Court observed that the Secretary of State's decision not to grant LTR to AM was rational and pursued legitimate aims, including minimizing the burden on taxpayers and protecting the employment market for citizens and lawful immigrants. Similarly, the

application of the Gillberg exclusionary principle cannot be accepted in the present case, which suggests that an individual cannot complain about the foreseeable consequences of their own actions under Article 8, in the context of immigration cases. The Court applied sections 117A-117D of the Nationality, Immigration and Asylum Act 2002, emphasizing that the public interest "requires" the deportation of foreign criminals unless there are "very compelling circumstances, which were not present in AM's case. It was also clarified that the 20-year residence condition in paragraph 276ADE of the Immigration Rules is part of a policy that only becomes relevant if other suitability requirements are satisfied, which AM did not meet.

(Lord Justice Lloyd-Jones, Lord Justice Hamblen, Lord Justice Stephens, Lady Justice Simler agreeing with Lord Sales)

THE SUPREME COURT OF IRELAND

7. Director of Public Prosecutions v. F.X

2024] IESC 25 [https://www.bailii.org/ie/cases/IESC/2024/2024IESC25OMalleyJ.html]

Present:
[Dunne, Charleton, **O'Malley**, Woulfe, Murray, JJ.]

Mens rea is irrelevant in physical acts expressly forbidden by law.

The judgment addresses the appeal of an accused person, FX, who was found unfit to plead due to mental illness. The court had to determine whether FX "did the act alleged" in the context of a section 4(8) of the Criminal Law (Insanity) Act 2006 hearing, which is a trial of the facts when an accused is found unfit to plead. O'Malley speaking for the majority grappled with the interpretation of "the act" and whether it includes both the actus reus (physical act) and mens rea (mental intent) of an offence. The court ultimately concluded that 'the act' refers to the physical act that caused an event forbidden by law, without reference to intent. The court found that FX's actions caused serious injury, which is forbidden by law, and therefore he should not be completely discharged from the criminal justice system, despite being unfit to plead to the murder charge. The court discussed the distinction between the physical act of committing an offence (actus reus) and the mental intent (mens rea). The Court considered various interpretations of "the act" and concluded that it refers to the physical act that caused an event forbidden by law, without reference to intent. It was observed that a word should be given the same meaning throughout an Act unless there is clear evidence to the contrary. The court outlined the criteria for determining whether an accused is fit to plead, including the ability to instruct legal representatives and understand the trial process. It was noted that understanding the trial process includes understanding the possibility of conviction for a lesser offence and that the trial for which the accused must be fit can have many different outcomes. It was clarified that a finding in a section 4(8) hearing that the accused did the act alleged is not a conviction and does not impose any penal sanction. It was also held that a finding that the accused did the act alleged

means that the accused is not discharged and that the proceedings are not at an end. The accused was entitled to have a formal document setting out the allegations and evidence against him. The court found it appropriate for the trial judge to consider that an acquittal on the murder charge would not dispose of all possible verdicts that might be reached in a trial. The accused could be discharged on the murder charge due to the prosecution's inability to prove causation of death but could still be held for the act of causing serious injury.

(Murray J, Dunnej, joined O'Maalley j, in majority judgment, while Woulfe J, joined Charleton J, in a dissent)

THE COURT OF APPEAL OF IRELAND

8. *Director of Public Prosecutions v. F.H.*

[2024] IECA 161 [https://www.bailii.org/ie/cases/IECA/2024/2024IECA161.html]

Present:
[**Birmingham President,** Kennedy, Burns, JJ]

Retrial of an accused cannot be ordered if there are significant lacunas in prosecution case.

The Court of Appeal was tasked with reviewing a directed acquittal in a case involving the respondent, F.H., who was acquitted of 13 counts of gross indecency. The acquittal was directed by the trial judge after the complainant's direct examination revealed discrepancies between his testimony and previous statements to Gardaí. The Director of Public Prosecutions (DPP) appealed the acquittal on the grounds that the trial judge should not have directed an acquittal without allowing the prosecution to clarify the timeline of the alleged offenses. The Court of Appeal found that the trial judge erred in directing the acquittal, as the defense was not disadvantaged by the way the evidence was presented. The Court also determined that the prosecution counsel acted properly and that there was no deliberate attempt to present the evidence unfairly. Despite this, the Court decided not to quash the acquittal and order a retrial, as it was not convinced that the interests of justice would be served by doing so, given the significant time lapse since the alleged offenses and the lack of corroborative evidence.

EUROPEAN COURT OF HUMAN RIGHTS

9. *Case of Spišák v. The Czech Republic*

https://hudoc.echr.coe.int/?i=001-234271

Present:
Mattias Guyomar, President, Lado Chanturia, Carlo Ranzoni, María Elósegui, Kateřina Šimáčková, Mykola Gnatovskyy, Stephane Pisani, judges, and Victor Soloveytchik, Section Registrar

Discrimination includes that other persons in an analogous or relevantly similar situation enjoy more favorable treatment.

In this case, the European Court of Human Rights addressed the issue of discrimination based on age in the context of pre-trial detention of a juvenile. The applicant, Mr. Pavel Spišák, a Czech national born in 2003, was arrested and remanded in

detention on suspicion of serious offenses, including robbery, grievous bodily harm, and attempted murder. He complained that, as a juvenile, his pre-trial detention was subject to automatic judicial review every six months, unlike adult detainees who were reviewed every three months for the same category of offenses. He argued that this constituted age-based discrimination contrary to Article 14 (prohibition of discrimination) in conjunction with Article 5 (right to liberty and security) of the European Convention on Human Rights. The Court observed that the pre-trial detention of minors should be used only as a measure of last resort and should be as short as possible. Minors who have been deprived of their liberty have the right to a judicial remedy, and periodic judicial review of the lawfulness of detention is essential. A system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with Article 5 & 4 of the Convention. Such decisions must follow at "reasonable intervals". It was noted that for an issue to arise under Article 14, it must be shown that other persons in an analogous or relevantly similar situation enjoy more favourable treatment and that the distinction is discriminatory. Age is an identifiable characteristic or "status" capable of amounting to discrimination within the meaning of Article 14. The Court also observed that a difference in treatment based on age requires an objective and reasonable justification to avoid being discriminatory. The State enjoys a margin of appreciation in assessing whether differences in treatment justify a different treatment. The juvenile justice system must provide additional protection for the rights of minors, taking into account their distinctive characteristics and vulnerability. The Court found that the Czech Republic violated Article 14 in conjunction with Article 5 by subjecting the applicant to a less favourable regime of automatic judicial review of detention based on his age without an objective and reasonable justification. The Court awarded the applicant non-pecuniary damages and costs and expenses, acknowledging the violation of his rights under the Convention.

SUPREME COURT OF INDIA

10. Bhupatbhai Bachubhai Chavda v. The State of Gujarat

https://webapi.sci.gov.in/supremecourt/2019/663/663_2019_7_1501_52176_Judgement_10-Apr-2024.pdf

Present:

Abhay S. Oka, J.

While deciding an appeal against acquittal, the Appellate Court has to re-appreciate the evidence. The judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. An order of acquittal further strengthens the presumption of innocence of the accused.

The State of Gujarat preferred an appeal against the order of the High Court whereby the High Court interfered and converted the acquittal of the appellants into a conviction for the offence punishable under Section 302, read

with Section 34 and Section 323 of the IPC.

The Supreme Court of India discussed the prime duties of the appellate court and held that "It is true that while deciding an appeal against acquittal, the Appellate Court has to re-appreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Appellate Court can interfere with the order of acquittal only if it is satisfied after re-appreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused.

SUPREME COURT OF INDIA

11. Ram Balak Singh v. State of Bihar

https://webapi.sci.gov.in/supremecourt/2012/3363/3363_2012_16_1501_52791_Judgement_01-May-2024.pdf

Present:

Pankaj MithaL, J.

The jurisdiction of the Civil Court in respect of the rights determined by the Consolidation Officer stands impliedly excluded by the very scheme of the Consolidation Act.

This is plaintiff's appeal arising out of a suit for possession and confirmation of his possession over the suit land which was decreed in his favour by the court of first instance but the decree was set aside in First Appeal and was affirmed by the High Court.

The Apex court of India held that we are conscious of the fact that revenue entries are not documents of title and do not ordinarily confer or extinguish title in the land but, nonetheless, where the revenue authorities or the consolidation authorities are competent to determine the rights of the parties by exercising powers akin to the Civil Courts, any order or entry made by such authorities which attains finality has to be respected and given effect to.

The jurisdiction of the Civil Court in respect of the rights determined by the Consolidation Officer stands impliedly excluded by the very scheme of the Consolidation Act. The appellate courts below completely fell in error in holding otherwise discarding the order of the Consolidation Officer which was sacrosanct as to the rights in respect to the suit land.

SUPREME COURT OF INDIA

12. Achin Gupta v. The State of Haryana

https://webapi.sci.gov.in/supremecourt/2022/15421/15421_2022_1_1502_52839_Ju

dgement_03-May-2024.pdf

Present:

Rajesh Bhardwaj .J

Circumstances highlighted where the power to quash the FIR, as provided section 482 Cr.P.C, can be exercised.

The Superior court of India has provided below categories for the application of section 482 Cr.P.C for quashing of the F.I.R.

The court has held that "we given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

SUPREME COURT OF CANADA

13. York Region District School Board v. Elementary Teachers' Federation of Ontario

2024 SCC 22 https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20504/index.do

Coram:

Wagner, Richard; Karakatsanis, Andromache; Côté, Suzanne; Rowe, Malcolm; Martin, Sheilah; Kasirer, Nicholas; Jamal and Mahmud JJ.

Administrative Law — Judicial review — Standard of review — Constitutional questions — Teachers grieving reprimand arising from screenshots taken by principal of their private communications on school laptop — Arbitrator dismissing grievance — Standard of review

applicable to arbitrator's decision as to whether teachers' right to privacy violated.

The arbitrator's decision regarding the violation of the Grievors' privacy rights was found to be unreasonable. Specifically, the Court determined that the arbitrator's reliance on the contents of the log in assessing the privacy interest at stake was inconsistent with the principle of content neutrality, which is essential under section 8 of the Canadian Charter of Rights and Freedoms. The decision was deemed unreasonable because it did not adequately adhere to the normative approach required by section 8 to protect privacy rights effectively. Therefore, the Court concluded that the appeal should be dismissed.

SUPREME COURT OF CANADA

14. *Attorney General of Quebec v. Named Person and His Majesty The King*

2024 SCC 21
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20493/index.do

Coram:

Wagner, Richard; Karakatsanis, Andromache; Côté, Suzanne; Rowe, Malcolm; Martin, Sheilah; Kasirer, Nicholas; Jamal, Mahmud; O'Bonsawin, Michelle; Moreau and Mary JJ.

Open trials are fundamental to democracy and the rule of law, balancing with principle of confidentiality involving informers.

The Supreme Court affirmed that while no "secret trials" exist in Canada, court openness is fundamental to democracy and the rule of law. It recognized the necessity of balancing this principle with confidentiality in cases involving informers, stressing that such measures should only restrict public access to information to the extent necessary to protect informer anonymity. The Court emphasized that transparency in judicial proceedings is essential for maintaining public confidence in the administration of justice, directing that any confidentiality orders must be narrowly tailored and should not completely obscure the existence or outcomes of court proceedings from the public eye.

SUPREME COURT OF CANADA

15. *Franck Yvan Tayo Tompouba v. His Majesty the King*

2024 SCC 16
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20420/index.do

Coram:

Wagner, Richard; Karakatsanis, Andromache; Côté, Suzanne; Rowe, Malcolm; Martin, Sheilah; Kasirer, Nicholas; O'Bonsawin and Michelle JJ.

Right to choose language in Criminal Trials

The Supreme Court clarified that under section 530(3) of the Criminal Code, an accused must be informed of their right to be tried in the official language of their choice at their first appearance before a judge. Failure to do so constitutes an error of law, and once established, presumes a violation of the accused's fundamental right. In the case of Franck Yvan Tayo Tompouba, whose

trial was conducted in English without being informed of his right to trial in French, the Court found that the breach of the informational duty mandated a new trial. Chief Justice Wagner emphasized that the burden should not have been on Mr. Tayo Tompouba to prove the violation of his rights, but rather on the Crown to rebut the presumption of prejudice. Therefore, the appeal was allowed, the conviction quashed, and a new trial ordered to be conducted in French to uphold Mr. Tayo Tompouba's language rights.

AUSTRALASIAN COURTS JUDGMENTS

16. The King v. Hatahet

https://eresources.hcourt.gov.au/downloadPdf/2024/HCA/23

Present:
Gordon A-CJ, Steward, Gleeson, Jagot And Beech-Jones JJ

In this case, the respondent pleaded guilty to engaging in hostile activity in a foreign state under s 6(1)(b) of the Crimes (Foreign Incursions and Recruitment) Act 1978 (Cth). In December 2022, he was sentenced to five years of imprisonment with a non-parole period of three years. The sentencing judge did not consider the likelihood of the respondent being released on parole under S. 19ALB of the Crimes Act 1914 (Cth), which prevents parole for individuals involved in terrorist activities unless exceptional circumstances exist. The respondent was held in the High Risk Management Correctional Centre under extremely onerous conditions due to his classification as an extreme high risk restricted (EHRR) inmate. Subsequently, the Attorney-General refused parole under s 19ALB, citing the respondent's support for terrorist activities. The Court of Criminal Appeal reduced the respondent's sentence to four years, considering the application of S. 19ALB and the expectation that parole would be refused, which would result in more onerous conditions of imprisonment. The issue before the High Court was, whether the Court of Criminal Appeal erred in concluding that the sentencing judge should have considered S. 19ALB when sentencing? Whether the expectation of parole refusal warranted a lesser sentence?

The judiciary must not take into account the likelihood of parole when determining sentences. This separation ensures that sentencing remains focused on the offence's severity and circumstances at the time of sentencing, maintaining the integrity of judicial sentencing and upholding the legislative intent to impose stringent parole conditions on individuals involved in terrorist activities.

Gordon A-CJ, Steward And Gleeson JJ, held that the Court of Criminal Appeal erred in taking into account the likelihood that parole would be refused under S. 19AB. The power to grant parole is vested in the executive, not the judiciary and it is too speculative for a judge to make predictions about what might happen at the expiration of a non parole period. The prospects of securing release on parole are not relevant to the judicial task of sentencing. To decide otherwise would lead to outcomes inconsistent with a core object of sentencing;

namely, the need to ensure adequate punishment of an offender. It would also undermine the legislative purpose of s 19ALB. The Court allowed the appeal and the reduction in sentence was set aside.

AUSTRALASIAN COURTS JUDGMENTS

17. Dayney v. The King

https://eresources.hcourt.gov.au/downloadPdf/2024/HCA/22

Present:
Gageler CJ, Gordon, Edelman, Gleeson, Jagot and Beech-Jones JJ

In this case, the appellant was involved in a violent altercation in October 2014 resulting in the death of Mark Spencer. At the first trial, the appellant was convicted of murder, with the Crown's case asserting that he killed Mr Spencer during a planned burglary. The appellant claimed self-defence, stating that Mr Spencer pulled out a gun and he acted to save his own life and that of his girlfriend. The trial judge instructed the jury that the defence of self-defence did not apply unless the appellant declined further conflict and retreated before the necessity to use force arose. On appeal, the Court of Appeal ordered a retrial but upheld the trial judge's interpretation of section 272(2) of the Criminal Code (Qld). At the retrial, the appellant was again convicted, and the Court of Appeal dismissed his appeal, affirming the previous interpretation of section 272(2). The question before the court was whether, as the Court of Appeal of the Supreme Court of Queensland unanimously held in the decision under appeal in R v Dayney [No 2]1 following the reasoning of the majority in R v Dayney [No 1], 2 s 272(2) specifies three independent conditions in which the protection given by s 272(1) is not available or whether, as Sofronoff P considered in Dayney [No 1], the final clause modifies the effect of the first two clauses.

The defence of self-defence is only available to those who have made genuine efforts to avoid using force that causes death or grievous bodily harm, maintaining the integrity and strict application of the self-defence provisions under the Criminal Code.

Gageler CJ, Gordon, Edelman, Gleeson, Jagot and Beech-Jones JJ, held that Section 272(2) comprises three independent conditions under which the protection of self-defence in section 272(1) does not apply:

a. If the person using force first begun the assault with intent to kill or do grievous bodily harm.
b. If the person using force endeavored to kill or do grievous bodily harm before the necessity for self-preservation arose.
c. If the person using force did not decline further conflict, and did not quit or retreat from it as far as practicable before the necessity for self-preservation arose.

The third clause of section 272(2) is an independent condition requiring the accused to have retreated from the conflict before engaging in force that causes death or grievous bodily harm. An accused who provokes an assault and then uses force causing death or grievous bodily harm cannot claim self-defence unless they demonstrate they made an

effort to retreat or de-escalate the situation before resorting to such force. The High Court affirmed the lower court's interpretation, which requires that for the defence of self-defence to apply in cases of provoked assault, the accused must have attempted to neutralise the threat they created before using deadly force. This interpretation ensures that self-defence remains a last resort and is consistent with the legislative intent of the Criminal Code (Qld).

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

18. Dinesh Moodley v. The State

https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/send/94-judgements-2024/4278-moodley-and-another-v-the-state-475-2023-2024-zasca-102-20-june-2024?Itemid=0

Coram:

Hughes, Mabindla-Boqwana JJA And Smith AJA

Reliability of identification evidence - prior familiarity with the accused can enhance the reliability of identification.

In this case Court considered an appeal against the conviction of appellants for murder. The appellants were accused of shooting and killing Avinash Manjanu following an altercation at a party in Lenasia South. The critical issue before the court was whether the State had proven beyond a reasonable doubt that the appellants were the perpetrators.

The incident occurred after a party where a fight broke out involving Moodley and the deceased's brother. Later that evening, as witnesses including Prenisha Moodley and others were discussing the earlier altercation, Perumal arrived in a vehicle with Moodley, allegedly directing Perumal to shoot the deceased. Perumal proceeded to fire shots at the deceased, who later succumbed to his injuries after crashing his vehicle nearby.

During the trial, several witnesses, including those familiar with the appellants due to familial ties, identified Perumal as the shooter. They testified that they had a clear view of the events under streetlights, despite the incident occurring at night. This identification formed a central part of the prosecution's case, supported by the witnesses' prior knowledge of the appellants.

The appellants denied their involvement, presenting alibis that they were elsewhere at the time of the shooting. However, this defense was contradicted by cellphone tower evidence placing them near the scene. The court also considered ballistic evidence, which although partially inconclusive, did not disprove the eyewitness accounts.

In its judgment, the court emphasized the importance of careful scrutiny of identification evidence, particularly when witnesses have prior familiarity with the accused. It referenced legal principles stating that such familiarity can bolster the reliability of identification, provided other factors like visibility and circumstances of observation support it. The court found that the eyewitnesses' testimonies, despite some minor discrepancies, remained consistent on crucial points

regarding the identity of the appellants as the perpetrators.

The trial court had rejected the appellants' alibi defense and found them guilty of murder. The Supreme Court of Appeal upheld this decision, dismissing the appeal. 's case beyond a reasonable doubt.

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

19. Eamonn Courtney v. Izak Johannes Boshoff

https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/send/94-judgements-2024/4280-eamonn-courtney-v-izak-johannes-boshoff-no-others-483-2023-2024-zasca-104-21-june-2024?Itemid=0

Coram:

Ponnan, Mocumie, Nicholls And Matojane JJA And Tolmay AJA

Even an incorrect judicial order has legal consequences until set aside.

This case revolves around the validity of a final sequestration order that was not preceded by a provisional order. The Court dismissed the appeal by Mr. Eamonn Courtney against the High Court's decision, which had declined to declare the final sequestration order a nullity. The High Court had varied the final order to a provisional one, but the Supreme Court found that the final order was not a nullity and remained valid until set aside by a court.

Mr. Courtney had sought to have the final sequestration order, the appointment of the trustees, and all subsequent actions taken by the trustees declared null and void. However, the court held that even an incorrect judicial order has legal consequences until set aside and that Mr. Courtney's only option was to apply for rescission of the order. The court found that Mr. Courtney had not been in willful default and had not shown good cause for rescission, as he had consciously chosen to ignore the sequestration order for two years.

The appeal was dismissed with costs, and paragraphs 4 to 8 of the High Court's order, which varied the final order to a provisional one, were set aside. The case underscores the importance of following proper legal procedures and the difficulty of overturning a final order without a strong legal basis for rescission.

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

20. Vusi Mabena v. The State

https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/send/94-judgements-2024/4263-mabena-v-the-state-709-22-2024-zasca-89-7-june-2024?Itemid=0

Coram:

Meyer, Weiner And Kgoele JJ

When multiple offenses are committed in close temporal and spatial proximity, and considering the substantial time spent in pre-trial detention, it is appropriate for the sentences for each offense to run concurrently.

In this case, Court addressed an appeal concerning sentencing for convictions of robbery with aggravating circumstances and attempted murder. The incident

occurred at Blairgowrie Shopping Centre in March 2010, where Mr. Mabena, along with his co-accused, committed armed robbery at a Nashua Mobile shop. During their escape, they fired shots at pursuing security guards. Both were convicted in the Regional Court, Johannesburg, and sentenced to significant prison terms.

The appeal focused on whether Mr. Mabena's sentences for robbery and attempted murder should run concurrently or consecutively. The High Court initially misunderstood the trial court's sentencing order, leading to confusion over the effective duration of Mr. Mabena's imprisonment. The Supreme Court of Appeal corrected this error, emphasizing that the sentences for robbery (15 years) and attempted murder (5 years) should indeed run concurrently due to the close temporal and spatial relationship between the two offenses. Additionally, the court noted Mr. Mabena's substantial time spent in pre-trial detention, which underscored the need for a fair consideration of the cumulative impact of his sentences.

Ultimately, the Court reinstated Mr. Mabena's appeal against sentence, affirming the convictions but adjusting the sentencing order to ensure that the 5-year term for attempted murder runs concurrently with the 15-year term for robbery with aggravating circumstances. This judgment clarifies the application of sentencing principles in cases involving multiple serious offenses and underscores the importance of properly balancing judicial discretion with the principles of fairness and proportionality in sentencing.

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