LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update ***Online Edition***

Volume - II, Issue - XIII

01-07-2021 to 15-07-2021

Published By: Research Centre, Lahore High Court, Lahore

Online Available at: https://lhc.gov.pk/news_letters

Disclaimer

Due care and caution has been taken in preparing and publishing this bulletin. Where required, text has been moderated, edited and re-arranged. The contents available in this Bulletin are just for Information. Users are advised to explore and consult original text before applying or referring to it. Research Centre shall not be responsible for any loss or damage in any manner arising out of applying or referring the contents of Bulletin.

FORTNIGHTLY CASE LAW BULLETIN

(01-07-2021 to 15-07-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

13.			Evidentiary value of sole statement of witness; improvements in statements; worth of DNA		8
14.			Inference from delayed postmortem		10
15.			Scope of reinvestigation after submission of challan and framing of charge		10
16.			Evidentiary value of chance witness, motive, abscondence and recovery made in violation of Section 103 Cr.P.C		12
17.			Evidentiary value of prosecution evidence disbelieved against co-accused		14
18.	SERVICE LAWS		Status of civil servant during deputation in an autonomous body	Lahore High Court	14
19.			Relief for person wrongfully removed in relation of Master and Servant?	Islamabad High Court	15
20.	SPECIAL LAWS	Company Law	Legal effect of lack of a Board Resolution authorising the attorney to file suit	Supreme Court of Pakistan	16
21.			Difference between unwillingness to pay debts and inability to pay debts	Lahore High Court	16
22.			Applicability of Limitation Act & CPC under Companies Ordinance	Lahore High Court	17
23.		Protection against Harassment of Women at Workplace Act, 2010	Scope of definition of "harassment"	Supreme Court of Pakistan	18
24.		Prevention of Corruption Act	Post arrest bail in matters of corruption which do not fall within prohibitory clause	Lahore High Court	20
25.		Anti Terrorism Act	Mode of conducting identification parade of more than one accused		20
26.		Financial Institutions Recovery of Finance Ordinance	Requirement of application for leave to defend and concept of fair trial		21
27.		Tax Law	Registration and taxation of a person who is involved in making of only exempt supplies		21

SELECTED ARTICLES

1. **Lahore High Court**
Ijaz Ali v. Robina Kausar, etc.
W.P. No.26235 of 2017
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC2503.pdf

Fact: After recording evidence of both parties, a miscellaneous application was filed by the petitioner for permission to submit receipts of dowry articles and filling of schedule of witnesses in order to produce additional witness. This application was dismissed.

Issue: Whether the application for submission of documentary evidence and filing of schedule of witnesses can be allowed at later stage?

Analysis: In the matter of grant of permission to produce documents which were not relied upon, one of the important factors which is kept in view is that as to whether the document was a public document admissible per se and that there was no possibility of its fabrication and that it was coming from safe custody. This was not the situation in the present case. It is settled rule that where a document is neither relied upon nor produced at the earlier stage, the order of the learned Trial Court rejecting the prayer to receive it at a belated stage is deemed to be just, fair and in accordance with law and such order could not be claimed to be illegal or unreasonable.

Conclusion: The application for submission of documentary evidence and filing of schedule of witnesses may be allowed at later stage if sufficient cause is shown to the satisfaction of court.

---

2. **Lahore High Court**
Ayesha v. Additional Sessions Judge, etc
W.P. No.42051 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2290.pdf

Facts: The petitioner has challenged the revisional court's order which allowed amendment in plaint under Order VI, Rule 17 C.P.C.

Issue: When an amendment in the plaint may be allowed?

Analysis: All rules of the Civil Procedure Code are geared towards securing proper administration of justice and should always be interpreted with this aim and purpose. Order VI, Rule 17 confers a discretionary power on a Court which a Court only exercises in consonance with and in the light of judicial principles contained in judicial precedents. It was further observed that incorporation of additional fact in the pleadings without changing nature of the suit or its underlying basis could not be treated as a change of cause of action which alters

the nature of the suit. Whenever an amendment was aimed at elaborating and amplifying an existing cause of action which neither changed its nature nor introduced a new cause of action different to the one originally pleaded in the suit it could be termed as inherent to and connected with the original cause of action pleaded in the suit. The Court went on to hold that such change would instead highlight the real controversy between the parties and promote fair adjudication of the dispute…. An amendment in pleadings may be allowed where multiplicity of suits will be avoided, where the amendment does not alter the subject matter or the cause of action of the suit, where it does not take away any accrued right, where the plaintiff becomes entitled to further relief by reason of events subsequent to the filing of the suit, where the cause of action needs amplification, where the interests of safe and accurate administration of justice so require, where on account of a plaintiffs' evidence a new statutory line of defence gets triggered, where no injustice will be caused, where a relief has inadvertently been left out – the list is not exhaustive but just an attempt at cataloguing instances where it will be in line with trite and established law to allow amendment in pleadings under Order VI, Rule 17 C.P.C.

Conclusion: See above.

---

3. **Lahore High Court**
Security 2000 (Pvt) Ltd. V. Muhammad Iqbal, etc
W.P. No.30576 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2719.pdf

Facts: By virtue of the judgment and orders passed by the forums below, respondent No.1 has been held entitled to receive dues for overtime (read unpaid wages) for four hours daily for a period of 16 months amounting to Rs.1,76,000/-; while gratuity and encashment of annual leave have also been allowed. The petitioner security company has laid a challenge to the grant of overtime dues. In an earlier round, writ petition was filed by the petitioner claiming the same relief as he seeks now, in the present matter. This petition was withdrawn. However, the Order whereby the petition was allowed to be withdrawn is silent about the permission to file a petition again as envisages by Order 23 Rule 1 C.P.C.

Issue: What is effect of order allowing application for permission to withdraw and file a fresh petition without recording any reason?

Analysis: Problem arose because the application for permission to withdraw and file a fresh petition was allowed without recording any reason. For such an eventuality guidance can be sought from a judgment of the Hon'ble Supreme Court of Pakistan reported as Muhammad Yar (2013 SCMR 464), according to which, in such a situation it should be implied and deemed that the court has found it to be a fit case for permission and has granted the permission to file a fresh suit because

this is a safer course which should be followed in the interest and promotion of justice, otherwise serious prejudice shall be caused to the plaintiff/petitioner who shall have to face the bar of sub-rule 3 and shall be left in a quandary.

Conclusion: In such a situation it should be implied and deemed that the court has found it to be a fit case for permission and has granted the permission to file a fresh suit because this is a safer course.

---

4. **Lahore High Court**
Yaqoob Ali and others v. Muhammad Ayub and others
WP No. 1447 of 2017
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC1046.pdf

Facts: The "respondents" were proceeded against ex-parte by the Civil Court after resorting to mode of substituted service and finally suit was decreed ex-parte.

Issue: When notice by substituted service can be ordered?

Analysis: The respondents had made no attempt to avoid acceptance of service in ordinary way. The Trial Court by ordering substitutive service without justifying the legal position had proceeded against the petitioner ex parte. Notice of a proceedings is a basic right of party and notice by substituted service cannot be ordered unless Court comes to the conclusion that party was avoiding service of notice or personal service was not reasonably practicable upon all defendants. A glimpse of record made it abundantly clear that proper procedure was not observed in effecting service upon the "respondents". No active or concrete effort was made for their personal service. The resort to the substituted service in the circumstances was not only highly unwarranted but sketchy.

Conclusion: Notice of a proceedings is a basic right of party and notice by substituted service cannot be ordered unless Court comes to the conclusion that party was avoiding service of notice or personal service was not reasonably practicable upon all defendants.

---

5. **Lahore High Court**
Anwar Hussain v. The State, etc.
Crl. Revision No.72278 of 2019
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC2420.pdf

Facts: Petitioner was convicted in private complaint under Section 6(5)(b) of the Muslim Family Laws Ordinance, 1961 and sentenced to simple imprisonment for one year with fine of Rs.5,00,000/-.

Issue: Whether the sentence of fine imposed against the petitioner can be reduced?

Analysis: The legislature through Punjab Muslim Family Laws (amendment) Act, 2015 substituted sub clause (b) sub section (5) of Section 6 of the Muslim Family Laws Ordinance, 1961 and has withdrawn the discretion of Court with regard to quantum of fine to be imposed and imposition of fine itself which very clearly transpires intention of the legislature. The case in hand when viewed in the context of the substitution/amendment mentioned supra leads the Court to conclude that imposition of fine of Rs.500,000/- to a convict under Section 6(5)(b) of Punjab Muslim Family Laws (amendment) Act, 2015 (Act No.XIII of 2015), is mandatory.

Conclusion: The sentence of fine imposed against the petitioner cannot be reduced.

---

6. **Lahore High Court**
Muhammad Qayyum Anjum v. Additional District Judge etc.
W.P. No.12103/2014
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC2341.pdf

Facts: The suit for recovery of dower etc was decreed against the petitioner. Petitioner contended that since the term and condition of their marriage relating to transfer of house is envisaged in column No. 16, the same is in the nature of deferred dower and the marriage of the parties is still intact, therefore, the respondent is not entitled to receive the same during subsistence of the marriage.

Issue: What is the nature of entries in column No. 13 to 16 of Nikahnama; and if time and mode of payment of dower is not specified, then what will be its effect?

Analysis: Entries in columns No.13 to 16 together become 'dower overall'. Thus, entry in column No. 13 of the nikahnama is to contain the amount of dower, entry 14 envisages the break-up of such amount of dower spelled out by the parties by virtue of entry under column No. 13 into prompt and deferred whereas entry in column No. 15 may contain anything given or paid out of the amount envisaged under entry 13 or in addition thereto forming as part of the dower overall. In the same strain, entry under column No.16 is to also form part of the dower overall in addition to the amount/cash which may be stipulated by way of entry under column No.13 and also in addition to anything else given by way of entry under column No. 15. Entries under columns No. 13 to 16 of the nikahnama envisage reflection and manifestation of the parties as to amount/Raqm and other articles and/or property given or to be given by husband to wife as the dower overall.

If no detail about the mode of payment of the dower is specified in the nikahnama, Section 10 of the Muslim Family Laws Ordinance, 1961 comes into play…Perusal of Section 10 of the Ordinance brings forth the legislative fiat that where no details about the mode of payment of dower has been spelled out by the parties to confer certainty to it under the marital contract, the omission or failure

of the parties to fill in and/or reflect their intention in a perspicuous manner, the legislature has stepped in to fill in such omission of the parties through Section 10 of the Ordinance which clearly states that, in such like situations, the entire amount of the dower shall be presumed to be payable on demand. The statutory presumption embodied under Section 10 of the Ordinance is rebuttable; however, the same has to be rebutted through positive evidence.

Conclusion: Entries in columns No.13 to 16 together become 'dower overall'. If no detail about the mode of payment of the dower is specified in the nikahnama, the entire amount of the dower shall be presumed to be payable on demand.

---

7. **Lahore High Court**
Muhammad Azeem v. Addl. District Judge, etc.
W.P. No.83217 of 2017
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC2442.pdf

Fact: The petitioner father claimed the custody of minor daughter.

Issue: Whether petitioner/father is entitled for custody of minor daughter?

Analysis: The petitioner never appeared personally and his father as Special Attorney had been pursuing the matter throughout who was involved in criminal cases. The petitioner had remarried, was settled abroad and that it was not in the welfare of the minor girl that her custody be disturbed by placing her at the mercy of the stepmother in the absence of her Dubai living father. Further to it, only after passing of decree for maintenance, the petitioner has filed custody petition. Even the second marriage of mother is no ground to claim custody as the maternal grandmother had a preferential right of custody. He is also disentitled on account of his conduct.

Conclusion: The petitioner/father is not entitled for custody of minor daughter.

---

8. **Lahore High Court**
Qamar Shahzad v. Judge Family Court etc.
W.P. No.32340/2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2021LHC2595.pdf

Facts: Respondents filed a suit for recovery of maintenance, dower and dowry articles which was decreed ex parte. The petitioner filed an application for setting aside the ex parte proceedings/order and decree, which was accepted and the ex parte proceedings/order and decree were set aside, subject to payment of costs of Rs.2000/-. However, on failure of the petitioner to submit written statement and to pay costs, his right to file written statement was closed.

Issue: Whether there is no provision in the Family Courts Act, 1964, empowering the Family Court to pass an order of closing the right of filing written statement?

Analysis: From the perusal of Section 10 of the Family Courts Act, 1964 it is clear that the Court shall examine the plaint, written statement, if any, and evidence, meaning thereby that filing of written statement in family cases is not essential. It must be remembered that the Family Courts Act has been enacted with the object of expeditious disposal of the disputes relating to the family affairs. Thus, for the orderly dispensation of justice under the Act, in the case of a contumacious default of a defendant to file the written statement, the Family Court will be well within its authority to make any order, in the nature of one envisaged by Order VIII, rule 10, C.P.C. and deprive him of his right to file the written statement. It is further observed that the petitioner not only failed to file written statement in spite of getting so many opportunities but he also did not comply with the order of the Court regarding payment of costs of Rs.2000/-, which was imposed while setting aside the ex parte proceedings.

Conclusion: In the case of a contumacious default of a defendant to file the written statement, the Family Court will be well within its authority to make any order, in the nature of one envisaged by Order VIII, rule 10, C.P.C. and deprive him of his right to file the written statement.

---

9. **Supreme Court of Pakistan**
Abdul Latif v. Noor Zaman
Criminal Petition No.126-P/2011
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._126_p_2011.pdf

Facts: In a murder case, complainant cited in the crime report one Z as well as deceased's aunt as witnesses of the crime, swapped by her maternal uncle and mother to drive home the charge.

Issue: What is the effect of replacement of witnesses initially cited in F.I.R?

Analysis: Replacement of the witnesses previously named in the crime report with those, lacking reference therein, would inevitably tremor the whole edifice as the transposition reasonably hypothesizes their absence at the scene.

Conclusion: See above.

10. **Lahore High Court**
Nazim Ali etc v. The State etc.
Cr. Appeal No.2137 of 2014
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2019LHC4923.pdf

Facts: Appellants were convicted and sentenced for offence of murder.

Issue: Whether a single circumstance creating reasonable doubt is sufficient for the acquittal of accused?

Analysis: For giving benefit of doubt, it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of the accused makes him entitled to its benefit not as a matter of grace and concession but as a matter of right.

Conclusion: A single circumstance creating reasonable doubt is sufficient for the acquittal of accused.

---

11. **Lahore High Court**
Ghaffar alias Kali v. The State
Criminal Appeal No.615-J of 2014
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2330.pdf

Fact: This is appeal against conviction and sentence under sections 496-A and 376 PPC.

Issue: What procedure should be adopted by trial court, if accused failed to hire his counsel for cross examination of witness?

Analysis: A court cannot come to just and fair decision of the case unless the credibility of a witness is tested on the touchstone of cross-examination. Cross-examination of the prosecution witnesses is very valuable right of the accused. If the accused is unable to hire the services of a counsel in Sessions trial or counsel appointed by him refused to represent him or to cross-examine the prosecution witnesses on his behalf, or if the counsel engaged by the appellant sought too many adjournments then it was duty of the Court to provide him a counsel at the State expenses.

Conclusion: The trial court shall provide opportunity to the appellant to hire the services of a private counsel of his own choice and in case of refusal of the appellant to hire a private counsel then the appellant shall be given the choice to choose a defence counsel from the list of defence counsel maintained by the learned Sessions Judge.

12. **Lahore High Court**
Azhar v. Dost Muhammad and another
Criminal Appeal No. 820 of 2016
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2300.pdf

Fact: This is appeal against conviction in murder case filed by accused wherein he is sentenced under section 302(b) to imprisonment for life.

Issue:
i) What is evidentiary value of injured witness?
ii) Whether prosecution evidence which has been disbelieved against co-accused can be believed against other accused persons?
iii) Whether abscondance of accused corroborates the prosecution case?

Analysis:
i) The injuries on P.W. are only indication of his presence at the spot but is not informative prove of his credibility and truth.
ii) If prosecution evidence is disbelieved qua one accused or one set of accused, then the same evidence cannot be believed against the other accused or other set of accused, without independent corroboration.
iii) Mere absconsion is not conclusive proof of guilt of an accused person. It is only a suspicious circumstance against an accused that he was found guilty of the offence. However, suspicions after all are suspicions. The same cannot take the place of proof.

Conclusion:
i) The injuries on the body of a witness do not mean that he is telling the truth.
ii) Prosecution evidence which has been disbelieved against co-accused cannot be believed against other accused persons without independent corroboration.
iii) The abscondance of accused does not corroborate the prosecution case.

---

13. **Lahore High Court**
Zadan Bibi v. The State and another
Criminal Appeal No. 102-J of 2018
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC2645.pdf

Facts: The convict lodged the instant Criminal Appeal through jail assailing his conviction and sentence. Zadan Bibi, the complainant of the case, filed Criminal Revision seeking the enhancement of the sentence of the convict.

Issue:
i) Whether sole statement of the victim can be taken into account to maintain the conviction and sentence of the appellant under the charge of rape?
ii) What is impact of Art 151 QSO 1984 on improvement in previous statement by a witness?
iii) What is worth of DNA Test

iv) What is worth of late recording of 161, Cr.P.C?

Analysis: i) The rule pertaining to sole statement of the victim is applicable only when the same is found to be confidence inspiring and trustworthy. The self-contradictory statement of the victim is neither trustworthy nor confidence inspiring and, thus, the same is not worthy of any reliance.

ii) It is also settled law that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. Reliance was made on the following august Court precedents; 2019 SCMR 631 and 2018 SCMR 772.

iii) DNA is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration. This implies that no case can be decided exclusively on its basis if there is no primary piece of evidence, like oral evidence. In our legal framework DNA evidence is evaluated on the strength of Articles 59 and 164 of the Qanun-e-Shahadat, 1984 (QSO). The former provision states that expert opinion on matters such as science and art falls within the ambit of 'relevant evidence'. On the other hand, the latter provision provides that the Court may allow reception of any evidence that may become available because of modern devices and techniques. In every case the prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the said chain or lapse in the control of the sample would make the DNA test report unreliable. It was also observed that it is trite that medical evidence is a confirmatory piece of evidence and cannot be a substitute for primary evidence. Under this regime the technician who conducts experiment to scrutinize DNA evidence is regarded as an expert whose opinion is admissible in Court. Further reference was made to subsection (3) of Section 9 of the Punjab Forensic Science Agency Act, 2007, which reaffirms this legal position. A combined reading of all these provisions shows that the report of the Punjab Forensic Science Agency regarding DNA is per se admissible in evidence under Section 510, Cr.P.C.

iv) It is a settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C is recorded with delay without offering any plausible explanation. Reference was made to the following cases reported as 1996 SCMR 1553, 1998 SCMR 570 and 1993 SCMR 550.

Conclusion: i) Sole statement of the victim can be relied only when the same is found to be confidence inspiring and trustworthy.

ii) Testimony with improvements is not worthy of credence.

iii) DNA is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration.

iv) Credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C is recorded with delay without offering any plausible explanation.

---

14. **Lahore High Court**
Nasir Abbas and another v. The State
Criminal Appeal No. 257189-J of 2018
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2312.pdf

Fact: This is appeal against conviction in murder case filed by accused persons wherein they are sentenced under section 302(b) to imprisonment for life.

Issue: i) What is evidentiary value of medical evidence?
ii) What inference can be drawn from a delayed postmortem?

Analysis: i) Medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant.
ii) The delay in conducting the postmortem examination on the dead body is suggestive of the fact that no eye-witness was present at the spot at the relevant time and the abovementioned delay has been consumed in procuring the attendance of fake eye witnesses.

Conclusion: i) Medical evidence is a type of supporting evidence.
ii) The inference from delayed postmortem is that time has been consumed in procuring the attendance of fake witnesses.

---

15. **Lahore High Court**
Abid Hussain v. The State, etc.
W.P. No.5777 of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC2737.pdf

Facts: The petitioner has challenged the third change of investigation order on the ground that since challan had been submitted and charge had been framed in the matter against him, the impugned order could not have been passed.

Issue: Scope of reinvestigation after submission of challan and framing of charge qua Article 18-A of the Police Order, 2002 in view of the judgments of the Apex Court reported as 2014 SCMR 1499 (three member bench) postulating a bar to reinvestigation and 2014 SCMR 474 (two member bench) envisaging no bar to the reinvestigation?

Analysis: It is noteworthy that the earlier judgments on the subject Muhammad Akbar's case 1972 SCMR 335 (four member bench), Muhammad Ashfaq's case 2004

SCMR 1924 (three member bench) and Bahadur's case 2006 SCMR 373 (three member bench) were not brought to the notice of the Hon'ble Court in the earlier cases and, therefore, the law enunciated in earlier judgments could not be commented upon and discussed.

Law on the point of stare decisis is well settled. It has been held by Hon'ble Apex Court that in case of conflict between judgments of Supreme Court, the judgment of larger bench prevails. Therefore, the four member bench judgment i.e. 1972 S.C.M.R. 335 prevails.

Since the prime consideration for further investigation, reinvestigation or change of investigation is to arrive at the truth (Section 156 Cr.P.C. read with Section 202 thereof), the hands of an investigating agency for any further investigation should not be tied on the ground of mere delay or that would prolong the trial. It is, therefore, clear that there is no embargo on the power of the police to further investigate or reinvestigate the matter after filing of challan and the absence of such embargo has to be interpreted as an allowance wherever such an allowance fulfills the purpose of investigation as mandated in sections 156 and 202 of Cr.P.C.
The object and purpose of investigation, further investigation or even reinvestigation is to probe and find evidence and place all such material before a court of competent jurisdiction, any material that would help the court in arriving at a just conclusion. The only rider placed by the Hon'ble Supreme Court of Pakistan is that the power of reinvestigation or further investigation is not available after trial court has disposed of the case.

It has been unequivocally ruled that channel of reinvestigation is available upto and during the course of trial. This is clearly indicative of the availability of the facility of reinvestigation or further investigation even after framing of charge.

In this view of the matter, it is clear that reinvestigation, further investigation or transfer of investigation is permissible even after submission of challan or for that matter framing of charge and till the time the trial is concluded. However, this, at the same time, does not mean that change of investigation or further investigation can be ordered as par for the course. There are certain postulates that have to be met before an order for further investigation or reinvestigation or transfer thereof can be passed. Such an order may be passed if some new event or incident is discovered warranting reinvestigation or further investigation. Such an order can also be made if some new evidence is discovered. Such an order can also be passed if the previous investigations have been conducted unilaterally without associating the actual culprit involved and without trying to identify and ascertain the person responsible for committing the crime. The police do not have an unfettered power in this respect and reinvestigation or further investigation may

only be carried out if some further material relating to the case is required or if the previous investigation is malafide or in excess of jurisdiction.

Conclusion: See above.

---

16. **Lahore High Court**
The State v Muhammad Ahmad alias Baggi
Murder Reference No.33 of 2017,
Criminal Appeal No. 485-J of 2017
Muhammad Ahmad alias Baggi v. The State
Criminal Appeal No. 486-J of 2017
Muhammad Sabir v. The State
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2021LHC2601.pdf

Facts: The convicts lodged Criminal Appeals through jail assailing their conviction and sentence. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to one of the appellants.

Issue:
i) What is evidentiary value of a chance witness?
ii) What is legal effect of dishonest improvements?
iii) What will be legal consequence if contradictions are found in the ocular account and medical evidence?
iv) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused of the appellants can be believed against the appellants?
v) What is evidentiary value of the recovery made in violation of section 103 CrPC?
vi) What is evidentiary value of motive?
vii) What is evidentiary value of abscondence?

Analysis: i) It was observed by the Hon'ble Cour that witnesses were under a duty to prove as to why they had come to the place of occurrence, just prior to the occurrence, when they had no business to be there in the normal course of their routine. If the ocular account of the incident had been furnished by chance witnesses then they had to state reasons for presence around the occurrence at the time of incident in issue. If it had not been established through any independent evidence then it is not worthy of reliance. The august Supreme Court of Pakistan has repeatedly held that in a scenario where the motivation was against the complainant or the witnesses but the accused did not cause any harm to them, notwithstanding being within the range of their firing, would reveal that the said witnesses were not present at the place of occurrence.

ii) Moreover once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place

reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence, reference was made to the case precedents reported as 2018 SCMR 772 and 2019 SCMR 631.

iii) When the ocular testimony is in conflict with the medical evidence then the benefit is to be extended to the accused.

iv) The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has recently held in PLD 2019 Supreme Court 527 that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case.

v) It was observed that where in recovery of weapons the prosecution had failed to associate any independent witness of the locality then the mandatory provisions of section 103, Cr.P.C. would be violated in that regard. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

vi) It is settled law that motive is a double-edge weapon, which can cut either way; if it is the reason for the appellants to murder the deceased, it equally is a ground for the complainant to falsely implicate them in this case. Hence, motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction.

vii) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with substantive piece of evidence. Both corroborative and ocular evidence are to be read together and not in isolation. Abscondence is only a suspicious circumstance. Abscondence itself has no value in the absence of any other evidence. Thus abscondence of the accused can never remedy the defects in the prosecution case. It per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence. Conviction on abscondence alone cannot be sustained. In the present case, substantive piece of evidence in the shape of ocular account has been disbelieved, therefore, no conviction can be based on abscondence alone.

Conclusion: See above.

---

17. **Lahore High Court**
Aqil Zaman alias Aqeel v. The State & another
Crl. Appeal No. 430 of 2020
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC2247.pdf

Facts: Appellant was convicted for commission of offence punishable u/s 302 PPC and was sentenced to life imprisonment. However his co-accused on identical charges was acquitted by the trial court and his acquittal was also maintained by the High Court.

Issue: What will be the effect when evidence of the prosecution is disbelieved to the extent of some of the accused?

Analysis: In this case co-accused of the appellant was assigned the same role of fire on deceased that is also attributed to appellant that he too made a fire on deceased. Appellant is therefore placed in similar position where his co-accused was. When to his extent both the eyewitnesses have already been disbelieved, how they can be believed qua appellant. Having the similar role, it cannot be said that the co-accused was acquitted on the principle of 'sifting the grain from chef' which too is no more applicable in Courts of Pakistan on the strength of PLD 2019 SC 527 where it was declared that "Rule falsus in uno, falsus in omnibus" shall henceforth be an integral part of our jurisprudence in criminal cases.

Conclusion: Benefit of the principal of falsus in uno, falsus in omnibus shall be given to the accused where evidence of the prosecution is disbelieved to the extent of any other accused person.

---

18. **Lahore High Court**
Dr. Shamim Akhtar v. Principal Secretary to Chief Minister Punjab etc.
ICA No.145/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC2679.pdf

Facts: In response to an advertisement made by respondent No.3 i.e., Secretary, Higher Education Department, the appellant, who was working in the School Education Department, applied for the post of Chairman, Board of Intermediate and Secondary Education, Multan (hereinafter called "the Board") through proper channel. After due process, the appellant was selected and appointed as Chairperson of the Board, on deputation basis for a period of three years.

Issue: Whether a civil servant working for the Province of Punjab when serves on deputation, in an autonomous body loses the status of being civil servant?

Analysis: The argument that the appellant was no more a civil servant during the period of her deputation is totally baseless. In the instant case, admittedly, the advertisement for the post of Chairman/Chairperson of the Board contemplates that both civil servant as well as private persons could apply for the said post. The appellant, in her capacity as a civil servant, made application for grant of an NOC to apply for the said post through proper channel. Meaning thereby, it was her status of a civil servant that entitled her to compete and get selected as Chairperson of the Board.

Conclusion: Appellant was a civil servant during the period of her deputation.

---

19. **Islamabad High Court**
Sajid Iqbal v. Pakistan Software Export Limited, etc.
Writ Petition No. 73 of 2021
Mr. Justice Athar Minallah, CJ
https://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-73-2021%20|%20Citation%20Awaited&cseTle=Sajid%20Iqbal-%20VS%20-Pakistan%20Software%20Export%20Board%20&%20others&jgs=Honourable%20Chief%20Justice%20Mr.%20Justice%20Athar%20Minallah&jgmnt=/attachments/judgements/125111/1/Sajid_Iqbal_v_Pakistan_Software_Export_Board_Limited_etc_WP_No_73_of_2021_637612724243530660.pdf

Fact: The petitioner has assailed his dismissal from service through this constitutional petition.

Issue: i) What is nature of employment of petitioner?
ii) What is relief for person wrongfully removed in relation of Master and Servant?

Analysis: i) It is noted that Pakistan Software Export Board Limited has not been established through a statute promulgated by the Majlis-e-Shoora (Parliament). The terms and conditions of employees of the respondent Company are not governed under statutory rules. The relationship of an employee and the respondent Company is in the nature of 'master and servant.
ii) When the relationship is in the nature of master and servant, then reinstatement cannot be sought as a relief. The only relief that an employee can seek in case of wrongful removal from service is by way of seeking damages.

Conclusion: see above.

20. **Supreme Court of Pakistan**
Rana Basit Rice Mills Private Limited v. Shaheen Insurance Company
Civil Appeal No. 45-L of 2018
Mr. Justice Mushir Alam, Mr. Justice Qazi Faiz Isa, Mr. Justice Sajjad Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._45_l_2018.pdf

Facts: The appellant invoked the jurisdiction of the Insurance Tribunal Punjab, Lahore and claimed loss.

Issue: Whether the lack of a Board Resolution authorizing the attorney to file a suit invalidates the institution of the suit?

Analysis: The lack of a board resolution authorizing the attorney does not invalidate the institution of the suit so long as the Articles of Association confer upon the person/persons power to institute the suit in the company's behalf. Even otherwise such a defect can always be cured by placing on record a Board Resolution issued even at a subsequent date, which would put the matter to rest.

Conclusion: The lack of a Board Resolution authorizing the attorney does not invalidate the institution of the suit so long as the Articles of Association confer upon the person/persons power to institute the suit in the company's behalf.

---

21. **Lahore High Court**
Summit Bank Ltd. v. Tanveer Cotton Mills (Pvt.) Ltd.
Civil Original No. 28 of 2013
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC2366.pdf

Facts: The petitioner/creditors sought winding up of companies on the sole ground that the companies are unable to pay their debts and their operations are unsustainable.

Issue: What is the difference between unwillingness to pay debt and inability to pay debt?

Analysis: Unwillingness to pay debts is not to be equated with inability to pay debts. If a company puts forth a good faith defence and disputes the amount to be due on substantial questions of law and fact, a winding up petition cannot be used as a tool for the recovery of an amount for which a normal remedy available to the petitioner would be the filing of a suit for recovery and the provisions of the Companies Act, 2017 cannot be used as an engine of coercive measures to extract an amount regarding which a dispute is shown to exist.
The term 'unable to pay its debts' is a term of art and will not be interpreted within the narrow confines of a bilateral dispute brought by a petitioner in a particular case but will have to be looked at in its proper perspective to encompass

the inability of a company to pay its debts generally and to conclude that it would be just and expedient to wind up a company owing to the fact that looking at the statements of accounts, the financial statements and the auditors' reports it can safely be concluded that a company is not a going concern and thus is a commercially unviable corporate entity. Clause (b) of sub-section (1) of section 302 states that a company shall be deemed to be unable to pay its debts if execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part. Therefore, the law presumes that in order for a court to deem that a company is unable to pay its debts it must await the result of a process issued on an execution for the satisfaction of a decretal debt and mere fact that a decree has been passed by a court of original jurisdiction will not compel the High Court to wind up the companies. However, clause (c) of sub-section (1) of section 302 empowers the High Court to presume that a company is unable to pay its debts if otherwise it is proved to the satisfaction of the court that the company is unable to pay its debts by taking into account the contingent and prospective liabilities of the company.

Conclusion: Unwillingness to pay debts is not to be equated with inability to pay debts. Inability to pay debts is an independent cause of action and must be predicated on the material brought on record which would show that the company is commercially insolvent and its future financial viability is in serious doubt. However, unwillingness to pay debts will take the case in the realm of *bona fide* dispute which the company sought to be liquidated has raised on substantial grounds.

---

22. **Lahore High Court**
Mst. Zahida Parveen v. Lamrey Ceramics (Pvt.) Limited etc.
Civil Original No. 58 of 2006
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC2766.pdf

Facts: The petitioner sought rectification of register of debenture-holders of the Company under Section 152 of the Companies Ordinance, 1984. Her earlier petition was dismissed due to non-prosecution and she took plea of pardanasheen lady as a sufficient cause which prevented her to approach the court within the period of limitation.

Issue: i) Whether provisions of Limitation Act 1908 & Civil Procedure Code are applicable on proceedings under Companies Ordinance, 1984?
ii) Whether plea of pardanasheen lady amounts to sufficient cause u/s 5 of Limitation Act, 1908; if so, whether petitioner is a pardanasheen lady?

Analysis: i) Section 152 of the *Ordinance* did not prescribe any time limit for filing of an application for rectification of register of members or register of debenture-holders of a Company. So, said provision remained under consistent judicial

scrutiny. Article 181 of Limitation Act applies to all applications filed under any statute and is not confined in any manner to merely the applications filed under the C.P.C. Under section 152 of the Ordinance an application is to be filed before the Company Bench of this Court and there appears to be no reason to deal with such an application differently than the application filed under Section 20 of the Arbitration Act. The Rule 7 of The Companies (Court) Rules, 1997 specifically states that the provisions of the Code of Civil Procedure, 1908, so far as applicable shall apply to all proceedings under the *Ordinance*.

ii) "Pardanasheen lady" is not a term of art. It has legal purport, impact and significance, which encapsulates certain defences in favour of a woman taking and establishing such plea, which are not available to other persons under the law. It is a bulwark, which offers legal immunity from certain ordinary binding legal principles especially a valid legal justification to substantiate the plea for condonation of delay on the touchstone of being unaware or uninformed. It offers a legitimate defence to agitate a cause of action which is otherwise barred by flux of time under the applicable limitation criteria.

Conclusion: i) Law of limitation as well as provision of the CPC are fully applicable to the petition filed under Section 152 of the *Ordinance*.

ii) The valid excuse of being a pardanasheen lady offers a strong ground and a reasonable consideration for exercising discretion in favour of a time barred application, as it is, if established, be taken as a sufficient cause within the contemplation of Section 5 of the Limitation Act, 1908 to condone the delay.

---

23. **Supreme Court of Pakistan**
Nadia Naz v. The President of Islamic Republic of Pakistan
Civil Petition No.4570 of 2019
Mr. Justice Mushir Alam, Mr. Justice Yahya Afridi, Mr. Justice Qazi Muhammad Amin Ahmad
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4570_2019.pdf

Facts: Petitioner filed a complaint alleging workplace harassment under the "Protection against Harassment of Women at Workplace Act, 2010" before the Federal Ombudsman against respondents No 4 & 5. During the pendency of complaint before the Federal Ombudsman, the petitioner was proceeded against departmentally, charge-sheeted, show-caused, and consequently terminated from service. The learned Federal Ombudsman, treated action and proceedings in the departmental enquiry against petitioner as harassment. Respondents No.4 and 5 were ordered to be proceeded against and "the penalty of withholding of promotion was imposed on them for a period of two years. The departmental disciplinary proceedings against the petitioner were set-aside and she was reinstated into service.

Issue: i) Whether the actionable "harassment", as defined in section 2(h) of the Act, 2010, is of restricted application or applies to all manifestations of harassment?

ii) Whether the Federal Ombudsman has the jurisdiction and/or authority to reinstate the petitioner into service under the provisions of the "Protection Against Harassment of Women at Workplace Act, 2010"?

Analysis: i) Harassment, in all forms and manifestations, may it be based on race, gender, religion, disability, sexual orientation, age-related, an arrangement of quid pro quo, and/or sexual harassment etc affects and violates the dignity of a person, as guaranteed under the Constitution of Pakistan, 1973… The Act, 2010, rather than addressing issue of harassment in all its manifestation, as noted above, in a holistic manner, is a myopic piece of legislation that focused only on a minute faction of harassment. The Act, 2010 confines or limits its application to sexualized forms, including orientation of unwanted or unwelcome behavior, or conduct displayed by an accused person towards a victim in any organization… Any misdemeanor, behavior, or conduct unbecoming of an employee, or employer at the workplace towards a fellow employee or employer, in any organization, may it be generically classifiable harassment, is not actionable per-se under the Act, 2010 unless such behavior or conduct is shown to be inherently demonstrable of its 'sexual' nature. Any other demeaning attitude, behavior, or conduct which may amount to harassment in the generic sense of the word, as it is ordinarily understood, howsoever grave and devastating it may be on the victim, is not made actionable within the contemplation of actionable definition of "harassment" under section 2 (h) of the Act, 2010. The harassment made actionable under the Act, 2010 is confined to the manifestation of harassment that is inherently demonstrable of sexual orientation as defined in section 2(h) read with Explanations, as reproduced above, which is part of the Schedule of the Act, 2010.

ii) The powers of the Ombudsman are given under Sections 8 and 10 respectively. None of the provisions of the Act, 2010 empowers the Federal Ombudsman to reinstate an aggrieved person back into service.

Conclusion: i) The harassment made actionable under the Act, 2010 is confined to the manifestation of harassment that is inherently demonstrable of sexual orientation as defined in section 2(h) read with Explanations, as reproduced above, which is part of the Schedule of the Act, 2010.

ii) Federal Ombudsman has no power to reinstate an aggrieved person back into service.

24. **Lahore High Court**
Muhammad Wajid etc v. The State
Crl. Misc. No. 3971-B, 3972-B, 3973-B, 33182-B of 2020
Mr. Justice Sardar Ahmed Naeem
https://sys.lhc.gov.pk/appjudgments/2021LHC2427.pdf

Fact: Petitioner seeks post arrest bail in offences under sections 409, 420, 468, 471, P.P.C. read with section 5 (2) of the Prevention of Corruption Act, 1947.

Issue: Whether the bail must be granted in matters of corruption which do not fall within prohibitory clause?

Analysis: The economic offences constituted a class apart and need to be visited with a different approach in the matter of bail. The bail in such like cases even can be denied which do not fall under the prohibitory clause of section 497, Cr.P.C. Moral element in such like crime is absent and it must not be forgotten that white collar crimes are of such nature which affect the whole society, even though they may not have any immediate victims. In such like cases pragmatic approach should be adopted by the Courts at the investigation as well as bail stage and that no leniency should be shown to the people involved in such like cases because then it would be impossible to successfully investigate and help bring the culprit to book or check the ever increasing cancer of corruption.

Conclusion: In matters of corruption, the bail may be denied in those offences which do not fall under the prohibitory clause of section 497 Cr.PC.

---

25. **Lahore High Court**
Aqib Javed & 3 others v. The State
Criminal Appeal No. 952 of 2019
Mr. Justice Raja Shahid Mehmood Abbasi, Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC2707.pdf

Facts: Appellants were convicted for commission of offences punishable u/s Section 365-A PPC and Section 7-E of the Anti-Terrorism Act, 1997.

Issue: What is the mode of conducting identification parade of more than one accused?

Analysis: Appellants were three in numbers and the identification parade had to be in one go. The learned Magistrate was under obligation to arrange three queues. In each line one appellant had to stand at a number of his choice and thereafter witnesses were to be invited one by one. Every witness had to identify the accused from each line.

Conclusion: See above.

26. **Lahore High Court**
National Bank of Pakistan v. M/S Kohinoor Spinning Mills and others.
Civil Original suit No. 103757 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC2821.pdf

Facts: The plaintiff, a financial institution, sought recovery of loan availed by the defendant alongwith mark-up, cost of funds, charges and cost of suit.

Issue: Whether the refusal of leave to defend the suit amounts to violation of Article 10-A and due process clause of the Constitution?

Analysis: Right of fair trial is subject to fulfilling the precondition prescribed by law for bringing up action before the Court. Article 10-A is to be read with Article 4 of the Constitution and if fair trial is dependent upon a pre-condition or pre-qualification, then such condition or pre-qualification must be met with before proceeding further with the matter. The mandatory provisions of the Financial Institutions Recovery of Finance Ordinance, cannot be bypassed or otherwise rendered redundant or ineffective merely on the plea of fair trial and due process because if mandatory requirement of filing leave to defend is rejected or the suit is decreed in the absence of such application, the aggrieved person would be at liberty to seek redressal in accordance with available provisions of law including Section 22 of the *Ordinance*. Fair trial does not mean a trial where neither any question of law nor a fact was established. It was further observed that Article 10-A of the Constitution also provides for determination of civil right and obligation and under the Ordinance, the defendant is also required to establish the question of fact and law for determination of civil rights and obligations, thus the same is not contrary to Article 10-A.

Conclusion: Article 10-A must be read with Article 4 of the Constitution, which stipulates that no action, detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. The requirement of filing an application for leave to defend under section 10 of the *Ordinance* does not negate or run contrary to the concept of fair trial and due process as provided under Article 10-A of the Constitution.

---

27. **Lahore High Court**
Muhammad Arif Ice Factory & others v Federation of Pakistan etc
Writ Petition No.30936 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC2788.pdf

Facts: It is case of the petitioners that they do not make any taxable supplies under section 2(41) of the Sales Tax Act 1990 (Act) but only exempt supplies, therefore,

they are not obligated to obtain sales tax registration under the Act. When they are not required by law to be registered, they are also not liable to pay "further tax" and "extra tax" levied on supplies of electricity and gas which are taxable supplies.

Issue: i) Whether or not a person who is involved in the making of only exempt supplies is liable to be registered under the Sales Tax Act, 1990?

ii) Whether any person, who makes "exempt supplies" and is not liable to be registered under the Act, has been burdened with payment of "further tax" and "extra tax" for non-registration?

Analysis: i) When seen in light of the provisions of section 2(25) of the Act, it is apparent that the person has an obligation to be registered under the law. Further as per section 14(2) of the Act, although petitioners are very much involved in the making of exempt supplies of "ice" under section 13 read with Item No. 27 of the Sixth Schedule to the Act yet none of the above scenarios is applicable requiring them to register. Firstly, the petitioners herein are engaged in making of exempt supplies of "ice" locally and import or export thereof is out of question. Secondly, there is no provision of the Act that requires petitioners to be registered. The petitioners are not required by any other Federal law to be registered under the Act. Therefore, registration of the petitioners is not warranted even under section 14(2) of the Act.

ii) "Further tax" under section 3(1A) of the Act is not intended to apply to and penalize those who make only exempt supplies and are not liable to be registered under the Act, otherwise the same would defeat the very intent, object and purpose of the levy. Words used in section 13(1) of the Act are very specific and provide for exemption from any taxable import or taxable supply of any goods from the whole or any part of the sales tax chargeable under the Act and not merely under Section 3(1) of the Act. This would mean that the provision of section 13(1) of the Act has an overriding effect on the chargeability of tax including "further tax" and "extra tax" under sections 3(1A) and 3(5) of the Act read with Notification No. SRO 509(I)/2013 dated 12.06.2013. As the supplies produced by the Petitioners have been exempted and they are under no legal obligation to obtain registration under the Act or to appear on the active taxpayers list maintained by the FBR, therefore, they are not liable to the payment of "further tax" and "extra tax". Burdening those with imposition of "further tax" and "extra tax" who are not liable to be registered under the Act results in violation of the fundamental rights to property, as guaranteed by Articles 23 and 24 of the Constitution.

Conclusion: See above.

28. **Lahore High Court**
Khawaja Muhammad Asif v. The NAB etc
WP No. 20976 of 2021
Mr. Justice Syed Shahbaz Ali Rizvi, Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2021LHC2686.pdf

Facts: The allegation against the petitioner is that he has amassed assets disproportionate to his known sources of income. He failed to provide the evidence regarding receipt of salary income in his bank account, and also income from ZEN Restaurant. He being a public office holder engaged himself in foreign employment contract/Iqama and concealed receiving of Rs.16,00,000/- salary per month and income from restaurant business and thereby has committed an offence of money laundering.

Issue: Whether prima facie case is established to entitle the accused for grant of bail?

Analysis: Both learned counsels admitted that the omitted amount of salary and income from business, if added, there would be no disproportionate assets qua the petitioner. Still NAB has not finalized the outcome of the assets acquired by the petitioner under the head of immovable assets. Neither there is any tangible material, nor even any circumstantial material to prima facie conclude that remittance of Rs.107 Million was generation of the proceeds of crime. The foreign remittance declared in income tax return carries the presumption of truthfulness. Reliance is placed upon Brig. (R) Imtiaz Ahmad versus The State (PLD 2017 Lahore 23). Even the FBR record regarding the petitioner's claim has supplemented his claim qua the properties, income gained by him and foreign remittance. It is admitted position that the petitioner did not cause any loss to the government exchequer. The prosecution has yet to establish its case before the trial court. Taking these and all other facts and circumstances including the duration of non-submission of reference till date before the trial court into consideration the petitioner in our considered view is entitled to be granted bail.

Conclusion: The prosecution has yet to establish its case before the trial court. Taking these and all other facts and circumstances including the duration of non-submission of reference till date before the trial court into consideration the petitioner in our considered view is entitled to be granted bail.

---

29. **Supreme Court of the United States**
Shular v. United States, 589 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-6662_c0ne.pdf
https://ballotpedia.org/

Facts: Eddie Shular pleaded guilty to charges of possession of a firearm by a convicted felon and to controlled substances possession. Shular was classified as an armed career criminal because of six previous drug convictions in Florida. He objected to the classification in court, arguing his previous convictions were not "serious

drug offenses" under the Armed Career Criminal Act (ACCA). The Northern District of Florida overruled the objection and sentenced Shular to concurrent terms of 15 years in prison on each count. On appeal, the 11th Circuit Court affirmed the district court's ruling. Shular appealed to the U.S. Supreme Court, arguing the 11th Circuit was wrong not to have used a categorical approach to interpret "serious drug offenses" under the ACCA and pointing to a circuit split regarding the determination of serious drug offenses under the ACCA.

Issue: Whether the determination of a "serious drug offense" under the Armed Career Criminal Act requires the same categorical approach used in the determination of a "violent felony" under the Act?

Analysis: Justice Ruth Bader Ginsburg noted that, unlike in the other provisions referenced by Shular that involve the categorical approach, the provision in question relating to "serious drug offenses" used the term 'involving' which should be interpreted to mean that "serious drug offenses" includes any crime that 'involves' the enumerated acts (distribution, manufacture, and possession of drugs). The opinion also noted that the rule of lenity, which would ordinarily require the court to interpret ambiguous phrases in a law in the manner most favorable to the defendant, was not applicable here since the terms being used were not genuinely ambiguous. Justice Brett Kavanaugh wrote a concurring opinion. He described the process for when the rule of lenity should be used: 1.) Courts must first attempt traditional methods of statutory interpretation and, if that fails, 2.) they may only resort to the rule of lenity when the terms being used are so grievously ambiguous that the court can only guess at what the legislature intended.

Conclusion: The court affirmed the 11th Circuit's decision in a unanimous ruling. The Court held that, under the Armed Career Criminal Act of 1984, the definition of "serious drug offense" requires only that the state offense involves the conduct specified in the statute. Unlike other provisions of the ACCA, it does not require that state courts develop "generic" version of a crime, describing the elements of the offense as they are commonly understood and then compare the crime being charged to that "generic" version to determine whether or not they qualify under the ACCA for purposes of penalty enhancement.

---

30. **Lahore High Court**
Shahzana Kazmi v. Federation of Pakistan, etc.
Writ Petition No.59484/2020
Mr. Justice Muhammad Qasim Khan, C.J
https://sys.lhc.gov.pk/appjudgments/2021LHC2064.pdf

Facts: Cabinet Division issued notice for auction of different articles available in Tosha Khana through which only the Officers of Federal Government and Armed Forces were held entitled to join auction proceedings depriving the general public to participate in auction proceedings.

Issue: Whether notification No.8/5/2017-TK dated 18th December, 2018 entitling the Officers of Federal Government and Armed Forces to join auction proceedings for auction of different articles available in Tosha Khana depriving the general public to participate in auction proceedings is ultra vires the Constitution?

Analysis: Prima facie the criteria to participate in auction proceedings set by Cabinet Division is not only hypothetical but also against the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan. There appears no nexus between the criteria and the object sought to be achieved through the auction, hence, it is a case of "suspect classification"… 'Auction' means only a public sale as distinguished from sale by private negotiation. Transparency and fairness are always an essence of governance. But in this case, the Federal Government has not only deprived the general public to participate in auction proceedings, but even as compared to Federal Officers and the Officers of Armed forces, has also excluded other public functionaries and the members of civil society; i.e. Officers of Provincial Administrative Service, Officers of Semi Government Departments and Local Governments, lawyers, doctors, engineers, persons from academia and literature etc. This discrimination amongst the Public Servants and viz-a-viz other segments of society is sheer violation of constitutional guarantees provided in terms of rule of law (Article 4), dignity of man (Article 14), freedom of business (Article 18), right to information (Article 19-A), equality of citizens and protection against discrimination and exploitation (Article 25).

Conclusion: Notification No.8/5/2017-TK dated 18th December, 2018 entitling the Officers of Federal Government and Armed Forces to join auction proceedings for auction of different articles available in Tosha Khana depriving the general public to participate in auction proceedings is ultra vires the Constitution.

---

31. **Ghulam Yasin Bhatti v. Federation of Pakistan**
I.C.A.No.23200 of 2021
Mr. Justice Abid Aziz Sheikh, Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC1038.pdf

Facts: The appellant prayed that Rule 3(2) of the Judicial Commission Rules, 2010 which provides for nomination to the posts of judges of the High Courts is violative of Article 25, 2-A, 193(2)(a) and all appointments made without calling for applications, without written examination and interview is wholly arbitrary and nepotistic based on personal likes and dislikes of the Chief Justice hence void in view of Article 8 of the Constitution being inconsistent with Fundamental Right enshrined in Article 25 of the Constitution. That all appointments to be made in future be not made without inviting applications, written examination and interview and as they do in Central Superior Services examinations.

Issue: Whether nomination to the posts of judges of the High Courts is violative of Article 25, 2-A, 193(2)(a) and all appointments made without calling for applications, without written examination and interview are wholly arbitrary?

Analysis: Article 175A of the "Constitution" provides a mechanism for appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court. In order to regulate its procedure, the Judicial Commission made the Judicial Commission of Pakistan Rules, 2010 in exercise of powers conferred by Clause (4) of Article 175A of the "Constitution". Rule 3 of the "Rules 2010" provides the procedure for nominations for appointments. In addition to the above, Rule 5 of the "Rules 2010" provides the manner of proceedings of the Commission. It is though one of the contentions of the appellant that Rule 3(2) is ultra vires to the "Constitution", but despite all his earnest efforts, he has failed to substantiate his argument to this effect. Sub-clause (8) of Article 175A of the "Constitution" prescribes that the Commission by majority of its total membership shall nominate to the Parliamentary Committee one person for each vacancy of a Judge in the superior judiciary; where after the Parliamentary Committee shall also delve and ponder upon the issue in terms of sub-clauses (12) and (13) of Article 175A of the "Constitution". The process or mode suggested by the appellant for filling up the vacancy of a Judge in the superior judiciary is clearly alien to Article 175A of the "Constitution". Any procedure, which is not recognized by Article 175A of the "Constitution", cannot be pressed into service for the said purpose, as it will amount to intrude the constitutional mandate.

Conclusion: The process or mode suggested by the appellant for filling up the vacancy of a Judge in the superior judiciary is clearly alien to Article 175A of the Constitution. Any procedure, which is not recognized by Article 175A of the "Constitution", cannot be pressed into service for the said purpose, as it will amount to intrude the constitutional mandate.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/articleSearch.aspx

   INTERPRETATION OF TAXATION STATUTES by Debatree Banerjee

   This article aims to answer the question: Which non-statutory principle of interpretation is applicable for interpreting the Tax Statutes? And what are the other aids which Courts can take into account while interpreting the Tax Statues?

   With the diversifying activities covered under the ambit of taxation laws, the rules of interpretation are gradually gaining practical importance in the taxing enactments.

2. **COURTING THE LAW**
https://courtingthelaw.com/2021/06/28/commentary/modification-of-visitation-schedule-to-facilitate-minors-affected-by-custody-litigation/

MODIFICATION OF VISITATION SCHEDULE TO FACILITATE MINORS AFFECTED BY CUSTODY LITIGATION by Fahad Ahmad Siddiqi

> *It is submitted that both parents can have equal access to minor children in custody cases. In 1970, the no-fault divorce made its first appearance in the United States (in California), highlighting that both parents had an equal right to have access to their children. Forty years later, in 2010, New York became the last state to adopt the no-fault divorce. Will it take another 40 years for children to be heard and have their rights routinely ignored?*

3. **PAKISTAN LAW DIGEST**
http://www.plsbeta.com/LawOnline/law/contents.asp?CaseId=2020J14

AN OVERVIEW ON PASSING OFF AND TRADEMARK by Muhammad Ayub

> *In summary, it is a very flexible right which can be used to protect goodwill in a wide-range of situations. It also can be advantageous in relation to trademark to bring passing off claims alongside infringement claims. Although there have been instances where trade mark claims have failed but passing off claims became successful, this is not common and passing off should form part of a wider IP enforcement strategy. This is because it is primarily an 'offensive' trade mark right and does not have the same deterrent effect as other registered IP rights. In a nutshell, there should be a provision on "passing off' in the present law. In the game-play of passing-off, it is not only essential to prove presumption of misrepresentation among the general public, but also to show deception of the public and damage / injury to goodwill.*

4. **NOTRE DAME LAW REVIEW**
https://www.law.gmu.edu/assets/files/publications/working_papers/1120ThreeConcepts.pdf

THREE CONCEPTS OF DIGNITY IN CONSTITUTIONAL LAW by Neomi Rao

> *The U.S. Supreme Court and constitutional courts around the world regularly use the term human dignity when deciding cases about freedom of speech, reproductive rights, racial equality, gay marriage, and bioethics. Judges and scholars treat dignity as an important legal value, but they usually do not explain what it means and often imply that it has one obvious core meaning. A close review of constitutional decisions, however, demonstrates that courts do not have a singular conception of dignity, but rather different conceptions based on how they balance*

individual rights with the demands of social policy and community values. Using the insights of political theory and philosophy, this Article identifies three concepts of dignity used by constitutional courts and demonstrates how these concepts are fundamentally different in ways that matter for constitutional law. In contentious cases, the concepts of dignity will often conflict. If constitutional courts continue to rely on human dignity, judges must choose between different understandings of dignity. This Article provides the groundwork for making these choices and defending a concept of dignity consistent with American constitutional traditions.