# 2012 P Cr. L J 91

***[Lahore]***

***Before Sh. Ahmad Farooq and Abdus Sattar Asghar, JJ***

**ASIF IQBAL and 3 others**—*Appellants versus THE STATE and another Respondents*

*Criminal Appeal No. 837 of 2011, heard on 6th September, 2011.*

*(b)* ***Control of Narcotic Substances Act (XXV of 1997)*** ***(Framing of Separate Charge)***

*—S. 9(c)—Criminal Procedure Code (V of 1898), Ss.4(c), 221, 227, 233 & 26S-D—Possessing narcotics—Framing, altering and amendment in charge—Scope—Different quantities of 'charas' were allegedly recovered from the possession of accused and their co-accused in two episodes; at one and the same time and place of occurrence; for which different recovery memos were prepared by the Investigating Officer at the spot—Law, in such circumstances, required that each accused should have been separately charged for possessing the 'charas' allegedly recovered from them—Framing of joint charge against accused persons with regard to separate recovery of charas weighing '1020 grams' from their co-accused recorded through a separate recovery memo was likely to cause prejudice to accused's case—Charge framed by the Trial Court, was liable to be altered on the basis of material available on the record.*

*The above case law has also been reported as* ***2012 Cr. L J (Criminal Law Judgment) 206***

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# 2012 P Cr. L J 138

***[Lahore]***

*Before Muhammad Qasim Khan, J*

**ZULFIQAR ALI**—*Petitioner versus THE JUSTICE OF PEACE/SESSIONS JUDGE and 7 others—Respond*

*Writ Petition No. 15058 of 2011, decided on 13th July, 2011.*

***Criminal Procedure Code (V of 1898)— (Registration of case/Direction of JOP)***

*—Ss. 22-A, 22-B & 154—Constitution of Pakistan, Art. 199— Constitutional petition—Registration of case—Petitioner had sought implementation of order of Justice of Peace, whereby S.H.O. was directed to record statement of the petitioner without any deletion or alteration and to proceed with the matter in accordance with law— Explicit order/direction, passed by Justice of Peace, must have been complied with in letter and spirit, when said order was not set aside by any court of law or the operation thereof had been stayed—Mere contention of respondents that same F.I.R. had already been registered was no ground to defy the direction of Justice of Peace—Even if, some case had already been registered, there was no bar regarding registration of another F.I.R. regarding the same occurrence.* ***Mushtaq Hussain v. The State 2011 SCMR 45 rel.***

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# 2012 PCr.L J 187

***[Lahore]***

***Before Shahid Hameed Dar and Altaf Ibrahim Qureshi, J J***

**HIMAYUN KHAN** SHAHEED—Appellant versus ***SARFRAZ*** AKHTAR and another—Respondents

I.C.A. No. 265 of 2011 in Writ Petition No. 5250 of 2011, decided on 23rd June, 2011.

***Criminal Procedure Code (V of 1898)— (Registration of Case, Refused)***

***—S.*** *154—Registration of F.I.R.—Grievance of the appellant in its present form could mot invoke any penal provision of law, nor it had necessitated the registration of a criminal case, as he had been directed by the Supreme Court to take recourse to the civil law for redressal of his personal grievances—Contention that the vaccination in question had caused weakening of the eyesight of the appellant was a far-fetched cry, as the appellant did not appear to have any evidence which could render his plea cogent or believable—Appellant had merely relied upon his verbal assertions rather than hinting at some documentary evidence, which might dune some nexus between his alleged claim of loss of eyesight and use of vaccination in question—Impugned order had been passed with sound reasoning and convincing arguments and it did not call for any interference—Intra-court appeal was dismissed in limine accordingly, (p. -189] A*

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# 2012 P Cr. L J 217

***[Lahore]***

*Before Syed Ijaz Hussain Shah, J*

**MUHAMMAD SHABBIR**— **versus** THE STATE and another Respondents

**Criminal Revision No. 68 of 2011," decided on 24th May, 2011.**

***(a) Criminal Procedure Code (V of 1898) (Deposit of Cash Security & Conditional Bail)***

*—Ss, 497 & 498—Penal Code (XLV of 1860), S. 489-F—Bail-Accused petitioner had been allowed bail by Trial Court on two conditions, <u>firstly</u> to file bail bonds in the sum of Rs. 100,000 with one surety in the like amount to the satisfaction of Ilaqa Magistrate and <u>secondly</u> to deposit Rs.200,000 out of the disputed amount mentioned in the cheque with the Trial Court <u>under protest</u> entitling the complainant to take the said amount on Superdari subject to the final decision of the case—Second condition had only been assailed by the accused who could not secure his release on bail for the last four months simply due to non-deposit of Rs.200,000 in cash—Impugned condition in the bail order was quite harsh, which in fact had amounted to denying bail to the petitioner in a case not attracting the prohibitory clause of S.497(l), Cr.P.C.—Court, while dealing with an application for bail under S.497 or 498, Cr.P.C. had no power to insist upon deposit of cash security—Sessions Court by imposing the impugned condition had travelled beyond its jurisdiction—Impugned order to the extent of deposit of cash amount of Rs.200,000 with the Trial Court under <u>protest</u> was, consequently, set aside and petition was accepted accordingly, [pp. 218, 220] A, B, C, D & E*

**Amir Sardar v. The State 1990 PCr.LJ 414 and The State v. Muhammad Hasham Babar PLD 1997 Lah. 605 rel.**

***Syed Shafique Hassan v. Muhammad Shoaib Abbasi and others 2011 YLR 558 distinguished.***

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# 2012 P Cr. L J 255 & PLJ 2012 Cr.C. (LHR) 180

***[Lahore]***

*Before Abdus Sattar Asghar, J*

**ABDUL GHAFFAR**— **versus** THE STATE and another

**Criminal Miscellaneous No. 9412/B of 2011, decided on 10th August, 2011.**

***(a) Criminal Procedure Code (V of 1898*** **(Stamp Vendor...Public Servant)**

—Ss. *498 & 498-A—Penal Code (XLV of1860), Ss.21, 420/468/471— Prevention of Corruption Act (II of 1947), S.2—Cheating, forgery, using as genuine a forged document—Stamp Vendor, a public servant—Protective bail, grant of—Stamp Vendor appointed by the District Collector who received the stamps from the Government Treasury for sale to the public; and received commission out of the public revenue for performance of his work, was in the service of the government, entrusted with performance of a public duty on behalf of the government and fell within the definition of 'public servant' in terms of S.21, clause ninth of P.P.C. and S.2 of Prevention of Corruption Act, 1947—Stamp vendor was duty bound to maintain the correct account and record of all such receipts and sale of stamp papers on the registers prescribed for that purpose—Offences alleged against stamp vendor, as one of accused of F.I.R., would make its case triable by the Special Court having exclusive jurisdiction in the matter— Accused could, in the first instance avail efficacious remedy before the appropriate forum—Stamp vendor, in the interest of justice, was allowed protective bail, in order to enable him to approach the relevant forum, which would automatically lapse on date up to which such bail was granted, [p. 260]* ***A*** **Crown v. Abdul Rehman PLD 1950 Lah. 361 rel.**

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# 2012 P Cr. L J 285

***[Lahore]***

*Before Ch. Muhammad Younis, J*

**MUHAMMAD TARIQ**—**versus** *ADDITIONAL SESSIONS JUDGE, DUNYAPUR*

***Writ Petition No. 9643 of 2011, decided on 29th July, 2011.***

***(a) Administration of justice—*** **(Civil and criminal proceedings)**

*Concurrent continuance not barred—Pendency of civil proceedings relating to same transaction is not a legal bar to the maintainability of criminal proceedings which can proceed concurrently, because conviction for a criminal offence is altogether a different matter from civil liability, [p. 287]* ***A*** ***Seema Farid and another v. The State and another 2008 SCMR 839 rel. Rafique Bibi v. Muhammad Sharif and others 2006 SCMR 512 ref.***

***(c) Criminal Procedure Code (V of 1898)—****S. 167— Penal Code (XLV of 1860), Ss.420/468/471—****Physical remand of accused pending civil suit****—Effect—Judicial Magistrate cannot refuse grant of physical remand of accused merely on the ground of pendency of a civil suit. [p. 288] C*

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# 2012 P Cr. LJ 301

***[Lahore]***

*Before Syed Ejaz Hussain Shah and Rauf Ahmad Sheikh, JJ*

**MAJID alias MAJU**—Petitioner versus THE STATE and another—Respondents Writ Petition No. 10141 of 2011, decided on 12th September, 2011.

***Criminal Procedure Code (V of 1898)—*** **(Compromise in 365-A/ 7-ATA)**

—**S.** ***426—Penal Code (XLV of 1860), S.365-A—Anti-Terrorism Act*** *(XXVII of 1997), S.7(e)—Constitution of Pakistan, Art. 199— Abduction for ransom—****Suspension of sentence on the basis of compromise—Not allowed****—Accused had been held guilty for abduction of a minor aged two years for ransom—Initial presumption of innocence in favour of accused, thus, had vanished—Complainant was stated to have forgiven the accused in the name of Allah Almighty and on this ground alone sentence of imprisonment for life awarded to him was sought to be suspended—Accused was*

*involved in a heinous offence against the society—Cases of abduction for ransom had alarmingly increased—Persons involved in such nefarious activities had put the parents of the poor victims to the agony of sleepless nights— Society had been put to shock and fear due to the activities of the outlaws in cases of abduction for ransom, which must be checked otherwise the social structure and norms of the civil society might collapse—Act of the accused could not be lost sight of in the name of the Compromise—Constitutional petition was dismissed accordingly, [p. 303] A & B* ***Ghulam Ali v. The State and another 1997 SCMR 1411; Ghulam Shabbir and 2 others v. The State 2003 SCMR 663 and Aziz Khan and another v. The State and another 2004 PCr.LJ 490 distinguished. Aziz Khan and another v. The State and another 2004 PCr.LJ 490 ref.***

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# 2012 P Cr. L J 333

***[Lahore]***

*Before Mazhar Iqbal Sidhu, J*

**ZULFIQAR ALI BALOCH—**Petitioner versus THE STATE and another—Respondents

Criminal Miscellaneous No. 11314/B of 2011, decided on 19th September, 2011.

***(a) Criminal Procedure Code (V of 1898)—***

*—S 497—Penal Code (XLV of 1860), S. 161—Prevention o f Corruption Act (II of 1947), S.5(2)—Public servant taking illegal gratification, criminal misconduct—Bail, refusal of—Accused, a Sub-Divisional Officer, had allegedly demanded Rs. 50,000 as illegal gratification for solving the legitimate electric problem of the complainant, to which complainant did not agree, as he had already accomplished the entire legal formalities—Consequently, in a raid conducted by Magistrate tainted amount had been recovered from the accused—No. malice had been seen on the part of the Magistrate or the Police Officer to become false witnesses against the accused, nor any defect was found in the raid proceedings—Sufficient material was available on record connecting the accused with the commission of crime—Alleged offence did not fall within the prohibitory clause of S.497(l), Cr.P.C, but this fact by itself did not create a right in favour of accused for grant of bail—Bail was declined to accused in circumstances, [pp. 336, 337]A &D* **Imtiaz Ahmed and another v. The State PLD 1997 SC 545 ref.**

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# 2012 P Cr. L J 352 / 2012 P Cr.R 459

***[Lahore]***

*Before Sh. Ahmad Farooq and Sayyed Mazahar Ali Akbar Naqvi, J J*

**FARRUKH SHEHZAD**—Appellant versus / THE STATE—Respondent

Criminal Appeal No. 754 of 2010, decided on 12th October, 2011.

***(a) Criminal Procedure Code (Vof 1898)— (No Confession after Charge)***

*—*Ss. *242, 243, 244, 265-D, 265-E & 265-F—Confession made by accused during trial after denial of charge—Effect—Sections 242, 243 and 244, Cr.P.C. clearly depict that once a formal charge is framed and put to accused, which is denied by him under S.242, Cr.P.C, provisions of S. 243, Cr.P.C. shall ipso facto become inoperative and court has to proceed under S.244, Cr.P.C. by recording the prosecution evidence as well as that of the accused, if led in defence—*

*Confessional statement made by accused after 2/3 dates of hearing after explicit denial of the charge at the time of framing the same, is of no legal effect in view of Ss. 244, 265-D, 265-E and 265-F Cr.P.C [p. 356] A*

***Faiz Muhammad v. The State 1986 PCr.LJ 2250; Muhammad Sadiq v. The State 1998 MLD 243; The State v. Jehandad Khan and 3 others 1998 PCr.LJ 592 and King Emperor v. Kasim Walad Mohamed Saffer AIR 1925 Sindh 188 ref***

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# 2012 P Cr. L J 380

***[Lahore]***

*Before Mehmood Maqbool Bajwa, J*

**MUHAMMAD KHALID**—**Petitioner versus STATION HOUSE OFFICER and others—Respondents Writ Petition No. 3485-Q of 2011, decided on 8th June, 2011.**

***(a) Criminal Procedure Code (V of1898)—*** ***(Second FIR...Not Barred)***

—S. *154—Second F.I.R., registration of—No line of distinction and demarcation had been made in S.154, Cr.P.C. putting embargo to lay information before police even after the registration of the first report regarding the same occurrence, [p. 382] A*

*(b)* ***Criminal Procedure Code (V of 1898)—*** *S. 154—Penal Code (XLV of 1860), S.324/34—Constitution of Pakistan, Art. 199—Constitutional petition—Attempt to comm.it qatl-e-amd—Quashing of second F.I.R.—Section 154, Cr.P.C. did not lay down any distinction and demarcation putting embargo on laying information before police even after registration of first report regarding the same occurrence—Perusal of accusation contained in both the reports suggested that the case was of two versions—Police Officer was complainant in the first F.I.R. which had suggested that son of respondent had sustained injuries due to aerial firing made by the accused petitioner in a marriage ceremony—Father of the injured had introduced the second version giving altogether different facts with reference to date, time and venue of occurrence, attributing direct firing to accused petitioner aiming at his son due to previous rivalry and enmity—Said second version had given entirely different facts suggesting commission of cognizable offence—Stance taken in the second F.I.R. was not an elaboration, explanation or amplification of the first F.I.R. and, therefore, registration of second F.I.R. was not legally barred—Order of registration of second F.I.R. made on the application of the father of injured by the Ex-Officio Justice of Peace was not open to any exception and consequently ho question of quashing the same could arise—Constitutional petition was dismissed accordingly, [pp. 382, 383] A, B, C & D Wajid Ali Khan Durrani and others v. Government of Sindh and others PLD 1997 Kar. 119; Rana Ghulam Mustafa v. Station House Officer, Police Station, Civil Line, Lahore and 2 others PLD 2008 Lah. 110; Rahat Javaid v. District Police Officer, Nankana Sahib and 6 others 2010 PCr.LJ 1629 and Mushtaq Hussain and others v. The State 2011 SCMR 45 rel.*

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# 2012 M L D 293

***[Lahore]***

*Before Sagheer Ahmed Qadri and Ch. Muhammad Tariq, J J*

**ABDUL KHALIQ**—Appellant versus THE STATE—Respondent

Criminal Appeal No.22-J and Murder Reference No.4/RWP of 2008, heard on 2nd March, 2011.

*(b)* ***Criminal Procedure Code (V of 1898),*** ***(All Walies did not Compound, death confirmed)***

*-S.345—Penal Code (XLV of 1860), Ss. 302(b), 324, 337-F(i), 309 & 310—Compounding offences, qatl-e-amd, attempt to commit qatl-e-amd and causing injuries 'damiyah'—Compromise—Three legal heirs/ walies of deceased (three daughters of deceased as well as accused) had made their statement that they had forgiven accused in the name of Allah Almighty and had compromised with accused, without getting any compensation; they had shown their intention to waive their right of Qisas and Diyat against the accused—Out of said legal heirs/walies, who claimed to be adult walies of the deceased had waived their right of Qisas and Diyat, but accused was convicted under S.302(b), P.P.C. and was awarded death penalty as Tazir—No doubt, if qatl-e-amd was penalized under S.302(a), P.P.C. as Qisas, then each and every adult sane wall under S.309, P.P.C. could waive his right of Qisas or under S.310, P.P.C. could compound the offence with accused, but where death penalty was provided as Tazir under S.302(b), P.P.C, then keeping in view S. 342(2), Cr.P.C., until and unless all the walies would compound the offence, compromise could not be allowed and court could not permit such compromise, [p. 300] C*

**Riaz Ahmad v. State 2003 SCMR 1067; Muhammad Arshad alias Papu v. ASJ, Lahore PLD 2003 SC 547 and Khan Muhammad v. State 2005 SCMR 599 ref.**

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# 2012 M L D 232

***[Lahore]***

*Before Malik Shahzad Ahmad Khan, J*

**RIAZ JAFAR NATIQ**—Petitioner versus THE STATE and another Respondents

Criminal Miscellaneous No. 8167-B of 2011, decided on 21st July, 2011.

***Criminal Procedure Code (V of 1898)— (out of four, two cheques dishonoured)***

*—S. 497—Penal Code (XLV of 1860), S.489-F—Dishonestly issuing a cheque—Bail, refusal of—Disputed cheque which was dishonoured on presentation, was issued by accused who was named in the F.LR.— Sufficient material was available on record to connect accused with the alleged offence—Accused had issued four cheques and out of those four cheques, two had been dishonoured on presentation which had shown that accused was in the habit of repeating the same offence— Accused remained fugitive from law—Grant of bail in offence, which did not fall within the ambit of prohibitory clause of S.497, Cr.P.C, was a rule and refusal was an exception, but, in view of facts of the case, case of accused fell under the exception of said general rule— Accused was not entitled to concession of bail, in circumstances, [pp. 233, 234] A & B* **Shameel Ahmed v. The State 2009 SCMR 174; Awal Gul v. Zawar Khan and others PLD 1985 SC 402 and Muhammad Siddique v. Imtiaz Begum and 2 others 2002 SCMR 442 rel**

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# 2012 MLD 222

***[Lahore]***

*Before Muhammad Anwaarul Haq, J*

**SIKANDAR**—*Petitioner versus THE STATE and another—Respondents*

*Criminal Miscellaneous No.4630/B of 2010, decided on 2nd March, 2011.*

***Criminal Procedure Code (V of 1898)—*** ***( Bail in added offences)***

*S. 497—Penal Code (XLV of 1860), Ss.365/302/201/109/148/149— Abduction, qatl-e-amd—Bail, grant of—Case was initially registered under S.365, P.P.C. and Ss.302, 201, 109, 148 and 149, P.P.C. had been added subsequently—Accused had already been allowed bail under S.365, P.P.C. by Trial Court—F.I.R. had been lodged after a delay of three years—No incriminating evidence was, statedly, available on the file against the accused—Co-accused, whose case was at par with the accused, had been granted bail by Trial Court— Complainant, father of the deceased, present in the court, did not oppose the grant of bail to accused—State also did not oppose the bail petition in view of the circumstances—Accused was admitted to bail, in circumstances, [pp. 223, 224] A, B & C*

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# 2012 M L D 209

***[Lahore]***

*Before Ch. Muhammad Younis, J*

**MUHAMMAD EJAZ—**Petitioner versus THE STATE—Respondent Criminal Revision No.371 of 2010, decided on 2nd June, 2011.

***Penal Code (XLV of I860)—*** ***(Statements, PM report, Complaint can not be Dismissed)***

*—Ss. 302/109/148/149—Qatl-e-amd—Defective and dishonest investigation of the State case by the police had necessitated the filing of a private complaint, which had been dismissed by the Trial Court vide impugned order—Validity—Trial Court had erred in law by summoning the record of State case and dismissing the private complaint relying on the proceedings conducted therein by the police, which had been disputed by the complainant having not been done fairly and honestly—Trial Court could not brush aside the cursory evidence of the complainant, rather it was obligatory on the Trial Court to make a tentative assessment of the same—Trial Court could not find faults with the private complaint by comparing the same with the police proceedings, which were never accepted by the complainant as honest—Opinion regarding the commission of any offence by the accused must have been formed by the Trial Court confining itself to the cursory evidence adduced by the complainant and the evidence produced before the Judicial Magistrate in private complaint during inquiry under S.202, Cr.P.C.—Private complaint could not be dismissed outrighily for want of incriminating material, when it was supported by the statement of the complainant as well as the postmortem report of the accused and the statements of the three other witnesses—Delay in lodging the private complaint could not be fatal in the given circumstances—Petition for change of investigation was also pending before the competent forum—Trial Court on one hand had dismissed the private complaint, whereas it was proceeding with the State case in which supplementary challan was yet to be submitted after reinvestigation, if ordered by the Board—Trial Court, thus, had caused grave miscarriage of justice and serious prejudice to the rights of the complainant—Impugned order was, consequently, set aside, and the private complaint was remanded to Trial Court for fresh decision in the light of above observations strictly in accordance with law—Petition was allowed accordingly, [pp. 212, 213] A, B, C & D* **Munawar Ali v. Ali Dost and others 2008 SCMR 853; Ahmed Ali v. The State 2007 PCr.LJ 372 and Muhammad Zulfiqar v. Muhammad Aslam and 7 others 2003 PCr.LJ 1442 ref.**

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# 2012 P Cr. L J 73

***[Lahore]***

*Before Abdus Sattar Asghar, J*

**RIZWAN AHMAD** *and 5 others—Petitioners versus THE STATE and another—Respondents*

*Criminal Revision No. 132 of 2010/BWP, decided on 27th September, 2011.*

***Criminal Procedure Code (V of 1898)—*** ***(Delayed Production of documents)***

***—Ss. 265-F & 493****—Evidence for prosecution—Admissibility of documents through the statement of Public Prosecutor acting under S.493, Cr.P.C, could not be questioned merely on the ground that the said documents were not produced by the prosecution under S. 265-F, Cr. P. C. at the earlier stage of trial—Delay in production of documents, in circumstances, would not render the documents inadmissible— Owing to the difference between civil and criminal proceedings with regard to documentary evidence when the genuineness of the documents was not questioned by defence side, the court should not refuse to admit the documents in evidence even at the later stage of the trial if it considered it necessary for just conclusion of the controversy especially when the defence had an opportunity to rebut the said documents by producing defence evidence—Even after admitting the documents in evidence, the court had power to look into intrinsic value of those documents to take reliance thereon or not. [p. 76] A*

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# 2012 PCr. LJ 94

***[Islamabad]***

*Before Iqbal Hameed-ur-Rehman, C.J.*

**ZIA MEHMOOD** *alias MAZHAR—Petitioner versus THE STATE and another—Respondents*

*Criminal Miscellaneous No.514/B of 2011, decided on 29th September***,**

***Criminal Procedure Code (V of 1898)— (Bail Refused, Specific Role of kicking, Murder )***

*—S. 497—Penal Code (XLV of 1860), Ss.316, 148 & 149—Qatl-e-Shibh-e-amd—Bail, refusal of—Accused was named in the F.I.R attributing specific role of kicking and delivering fist blows to the deceased—Offence with which accused had been charged, fell within the ambit of prohibitory clause of S.497, Cr.P.C; and in such like cases the rule was jail and not bail—No ill-will or ulterior motive on the part of the complainant or the local police had been shown by accused for his false implication—Prosecution witnesses had stood by their statements made before the police fully implicating accused with the commission of alleged offence—Accused had remained a proclaimed offender for a period of more than three months—Precious life of a young person, who was the hope of his family, was lost in the occurrence at the spot—Ipse dixit of the Police, was not binding upon the court—Only tentative assessment was required to decide the bail application and deeper appreciation of evidence could not be appreciated at bail stage—Prima facie sufficient incriminating material was available on the record to connect accused with the commission of the alleged offence—Bail application of accused was dismissed, in circumstances, [p. 97] A*

***Shafqat Abbas v. The State 2005 YLR 1588; Muhammad Shafiq alias Chhara and another v. The State 2007 MLD 736; Mst. Qudrat Bibi v. Muhammad Iqbal and others 2003 SCMR 68; Abdul Rehman v. Ali Sher and others 2000 PCr.LJ 33; Falak Sher and 3 others v. The State 2001 PCr.LJ 954; Safdar Jameel v. The State 2003 PCr.LJ 110; Muhammad Waqas v. The State 2003 SCMR 1370 and Sher Ali alias Sheri v. The State 1998 SCMR 190 ref.***

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# 2012 P Cr. L J 11

***[Federal Shariat Court]***

*Before Shahzado Shaikh, J*

**MUHAMMAD ASLAM—***Appellant versus THE STATE—Respondent*

*Jail Criminal Appeal No. 112/1 of 2009, decided on 4th March, 2011.*

***(a) Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)*** ***(16 years age, doubted consent)***

*—Ss. 10(3) & 11—Zina-bil-jabr liable to Tazir, abducting or inducing a woman to compel for marriage—Appreciation of evidence—Accused had claimed that his Nikah was performed with the alleged abductee— Age of alleged abductee, according to the lady doctor was 16 years at the time of her medical examination—Alleged performance of Nikah of alleged abductee, with accused was not legally transparent as none of her parents or relations were associated in the process, which could legally and in Shariah render apparent support to the claim of accused—Accused had not produced any of the witnesses of alleged Nikah, nor produced. Nikah Khawan in support of his plea of Nikah; nor any other material regarding registration of the same—Plea of accused, had no legal value or weight that alleged abductee had contracted her Nikah with accused with her free consent which had rendered the commission of intercourse with the victim/alleged abductee by accused within the mischief of definition of "zina-bil-jabr"—**Alleged abductee was only about 16 years of age, whereas accused was more than 44 years of age and he could well be of age of her father—Question of free consent and intelligent choice of the girl of 16 years old, in such circumstances, did not arise—**Even if the alleged consent of victim girl was obtained by putting her in fear, it was act a free consent and freely considered choice for Nikah—Some of the mgredients of S.ll of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 were asserted by the victim saying that accused was armed with gun at the time of occurrence—Element of show of force was apparent in the case, in circumstances—Prosecution had proved the guilt of accused beyond any reasonable doubt and he stood rightly convicted under Ss.l0(3) & 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 by the Trial Court—Conviction of accused was maintained—Prescribed sentence under S.ll of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was imprisonment for life and not less, but the Trial Court had awarded rigorous imprisonment of 10 years only though it was not empowered to do so and fine was also mandatory to be imposed under S. 11 of the Ordinance—Extenuating and mitigating circumstances and the fact that family of accused, particularly his wife, had also been made to suffer for no fault of theirs; and continuing the separation of accused would make life of entire family more miserable than his own life imprisonment— Enhancement of sentence, in such peculiar situation, would not be appropriate and safe—Sentence of 10 years' R.I. awarded to accused by the Trial Court, was converted into already undergone to resolve the complication created by the judgment of the Trial Court by not awarding the prescribed sentence and also to safeguard against any element of injustice, [pp. 16, 18, 20, 21] A, C, D & F*

***(b) Islamic Law***

***—Marriage—Consent in marriage****—Considerations—Awareness about marriage encompassed more serious matters than mere carnal knowledge (relating to physical feeling and desires of body)—Islam had placed conjugal consent over high pedestal of morality, rather than carnality—Consenting adult was a person who had come of age enough and was responsible enough to decide and understand consequences of marriage—Marriage, involved a consent which was quite distinct in definition and in differentiation from all types of other consent e.g., common consent, mutual consent, or implied or express consent-Consent for marriage was eloquent and declaratory, being more specific and expressive—Consent for marriage had deeper and wider implications for criminal, civil and family law e.g., inheritance etc.— Free consent for marriage did not mean just acceding to or saying "yes" to the circumstantial or situational dictate; it needed to be analyzed considering, ability of exercising free choice; capacity (legal capacity) not only sane, but mature mind; capability to use that capacity; availability of assistance ofWali and Wakil etc.—Because of such an importance, its registration as formal 'Nikahnama', not mere motorization, was essential, in the interest of concerned individual, family and society, which left no room for admission of mere oral assertion or averment, particularly by one party when the other party vehemently denied it. [p. 17] B*

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# 2012 P Cr. L J 47

***[Lahore]***

*Before Abdus Sattar Asghar, J*

**ZAHID HUSSAIN**—*Petitioner versus ABDUR RASHEED and 4 others—Respondents*

*Criminal Revision No. 137/BWP of 2011, decided on 20th September, 2011.*

***(a) Criminal Procedure Code (V of 1898)—*** ***(Tutored Evidence, Complaint Dismissed)***

*—Ss. 200, 203 & 435—Penal Code (XLV of 1860),* ***S. 379****— Examination of complainant—Dismissal of complainant—F.I.R., earlier filed by the petitioner/complainant, was cancelled after investigation by the Police and proceedings under S.182, P.P.C. were initiated against the complainant—After lapse of more than six years, complainant lodged a private complaint in the court of Magistrate on the basis of the same allegation against the respondents—Magistrate during*

*inquiry under S. 203, Cr.P.C, dismissed said private complaint on the grounds that evidence produced by the complainant was neither cogent nor reliable or confidence-inspiring—Complainant filed appeal against order of the Magistrate before the Additional Sessions Judge, who dismissed said appeal—Impugned order passed by the Magistrate, being not appealable, complainant had wrongly invoked appellate jurisdiction of Additional Sessions Judge by filing appeal against impugned order—**Additional Sessions Judge, who was competent to convert the wrongly filed appeal into revision under S.435, Cr.P.C, having not done so, entertainment of complainant's appeal and its disposal while exercising appellate jurisdiction, was coram non judice** and order passed by Additional Sessions Judge was void and without jurisdiction, [pp. 49, 50] A & B*

***(b) Criminal Procedure Code (V of 1898)—***

***Ss. 200, 202 & 203—Penal Code (XLV of 1860), S. 379—Theft- Examination of complainant—Dismissal of complainant—Record had** revealed that statements of the complainant and his witnesses recorded by Magistrate in terms of S.202, Cr.P.C, lacked intrinsic and inherent worth as the complainant and his witnesses had made **tutored statements totally oblivious of the time and date of alleged occurrence—**Said witnesses were neither confidence-inspiring nor reliable—Complainant had filed said complaint after six years of the alleged occurrence—Delay in lodging of the private complaint, though was no ground for its dismissal, but in the present case, mala fide of the complainant could not be ignored as he had not approached the court with clean hands—Complainant's statement and evidence of prosecution witnesses in such state of affairs, could not be termed as prima facie, reliable incriminating material to issue the process under S.202, Cr.P.C.—Prosecution story and the testimonies of interested prosecution witnesses, neither reliable nor confidence-inspiring, had shown that Magistrate had rightly weighed the cursory evidence and other material on the record produced by the complainant with due care and application of judicious mind while passing impugned order which did not suffer from any illegality, impropriety or irregularity of proceedings—Petition was dismissed, [p. 51J C*

***Noor Muhammad v. The State and others PLD 2007 SC 9; Imtiaz Rubbani alias Billu v. The State and another PLD 2008 Lah. 441 and Muhammad Yousaf and others v. The State 2000 PCr.LJ 488 distinguished***

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# 2012 P Cr. L J 104

***[Lahore]***

*Before Syed Muhammad Kazim Raza Shamsi, J*

**Hafiz MUHAMMAD NAEEM** ***and 3 others—Petitioners versus THE STATE and another***

***Criminal Miscellaneous Nos. 1269-M and 1817-M of 2011, heard on 10th August, 2011.***

**Penal Code (XLV of I860)—** ***(Hurt Case, 337-N, Punishment of imprisonment, not provided)***

*—**Ss. 337-A(i), 337-F(i), 337-F(v), 337-N & 34**—Criminal Procedure Code (V of 1898), S.561-A—Causing Shajjah-i-Khafifah, Damiyah and Hashimah—Sentence, enhancement of—Trial Court awarded sentence of payment of Daman to accused persons and did not award any imprisonment as 'Tazir'—Rigorous imprisonment from one to two years, was awarded to accused persons on revision, against which accused had filed petition under S.561-A, Cr.P.C.—Contention of accused that no notice for enhancement of sentence was served upon them, had no substance, as requirement of law was the hearing of accused himself or through his pleader in the proceedings, where his sentence was to be enhanced—**Separate written notice was not required to be given to accused under S. 439, Cr.P.C. before enhancing the sentence awarded to them**—Under provisions of subsection (2) of S.337-N, P.P.C., courts in all hurt cases would award the principal sentence of Daman and Arsh and would indict accused for imprisonment as 'Tazir', if he was found previous convict, habitual, hardened, desperate or dangerous criminal; or he had committed the offence in the name or on the pretext of honour and punishment of imprisonment could not be inflicted in all cases of hurt—Nothing was available in the evidence of the prosecution to show that the petitioners fell within the category of such offenders—Sentence of imprisonment imposed on accused persons by the Appellate Court while enhancing the sentence, was illegal—Impugned order whereby sentence was enhanced, was set aside and accused detained in jail, were set at liberty, in circumstances,*

*[pp. 107, 108] A & B* ***2000 PCr.LJ 2075 and Mushtaq Ahmad and others v. Secretary, Ministry of Defence through Chief of Air and Army Staff and others PLD 2007 SC 405*** ref.

***Ali Muhammad v. The State PLD 2009 Lah. 312*** **rel.**

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# 2012 M L D 114

***[Lahore]***

*Before Abdus Sattar Asghar, J*

**M. SHARIF**—Petitioner versus S.H.O. and others—Respondents

Writ Petition No.3487 of 2011/BWP, decided on 13th September, 2011.

***Criminal Procedure Code (V of 1898)—*** **(Section 172-188 PPC, FIR is barred)**

*—Ss.195 & 561-A--Penal Code (XLV of1860), S. 188—Constitution of Pakistan, Art.199—Constitutional petition'—Disobedience to order duly promulgated by public servant—Quashing of F.I.R.—Even, if the offence under S.188, P.P.C. had been declared cognizable, the fact would remain that S. 195(1 )(a), Cr.P.C, had not provided that no court was competent to take cognizance of the offence under Ss.172 to 188, P.P.C, unless a complaint in writing was made by the public servant concerned or by some other public servant to whom he was subordinate—F.I.R. was lodged on the statement of private person— Registration of impugned F.I.R., in circumstances was violative to provision of S. 195(1 )(a), Cr.P.C. and was void ab initio—Mere forwarding of challan to the Trial Court was no hurdle in quashing of F.I.R. lodged violative to provisions of S. 195(1 )(a), Cr.P.C. [p. 115] A*

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# 2012 M L D 158

***[Balochistan]***

*Before Muhammad Hashim Khan Kakar and Jamal Khan Mandokhail, JJ*

**SHER AHMED**—***Petitioner versus KHUDA-E-RAHIM, . CP. No.495 of 2011, decided on 13th October, 2011.***

(b) ***Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)—***

*—Ss. 4 & 5—Penal Code (XLV of 1860), Ss. 302/34—Anti-Terrorism Act (XXVII of 1997), Ss. 3, 6, 13 [as amended by Anti-Terrorism (Amendment) Ordinance (XXXIX of 2011)] & 39(1)—Constitution of Pakistan, Arts. 9 & 199—Constitutional petition—****Double murder on allegation of siyahkari****—Conviction and sentence awarded to accused on 27-10-1999 by Special Court after his trial in absentia—Order of Sessions Judge suspending such conviction/ sentence and directing fresh trial of accused on his application made in November, 2010 under S. 5-A(7) of Suppression of Terrorist Activities (Special Courts) Act, 1975—Validity—Special Court was not in existence on the date of such application, rather its successor forum i.e. Anti-Terrorism Court established under Anti-Terrorism Act, 1997, was in existence— Suppression of Terrorist Activities (Special Courts) Act, 1975 was repealed vide S. 39(1) of Anti-Terrorism Act, 1997, but acts done under Act of 1975 were given due protection by S. 39(2) of the Anti-Terrorism Act, 1997—Accused had committed double murder on bald allegation of siyahkari in a brutal manner by means of firing with kalashinkov—Such act of accused being a Scheduled offence fell within ambit of S. 6(ii)(g) of Anti-Terrorism Act, 1997 and his case was exclusively triable by Special Court constituted under S. 3 thereof— Neither law nor religion permitted so-called honour killing, which amounted to murder—Such iniquitous and vile act of accused was violative of Art. 9 of*

*the Constitution—Present case was instituted under repealed Act of 1975, whereunder accused could be punished by Judge of Anti-Terrorism Court, if prosecution succeeded to establish his guilt—High Court set aside impugned order and directed Sessions Judge to transmit main case along with such application to concerned Anti-Terrorism Court for its decision in accordance with law. [pp. 161, 163, 164JB, C, D, E, F & G.* ***Muhammad Akram Khan v. The State PLD 2001 SC 96 rel. Zaiullah Khan v. Khan v. Govt, of Punjab PLD 1989 Lah. 554 and Mehram Ali v. Federation of Pakistan PLD 1998 SC 1445 ref***

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# 2012 M L D 1

***[Lahore]***

*Before Sagheer Ahmad Qadri and Sayyed Mazahar Ali Akbar Naqvi, JJ*

**Master ABBAS KHAN**—Appellant **Versus** Subedar SIKANDAR KHAN—Respondent Regular First Appeal No. 72 of 2001, heard on 20th September, 2011.

***(a) Tort——Malicious prosecution****—Suit for damages—Maintainability— Scope—Acquittal of accused of charges by extending him benefit of doubt by criminal court—****Benefit of doubt****—Scope—Such acquittal of accused would not bring his case within ambit of malicious prosecution entitling him to claim damages from complainant—Rationale behind . the proposition stated.*

*If the accused is acquitted of the charges while extending benefit of doubt, he cannot claim damages. The rationale behind the same is that it is a cardinal principle of administration of criminal justice which is a basic norm of Criminal Jurisprudence that* ***you can acquit one hundred guilty, but cannot convict one innocent person.*** *The same principle has also been given much credence in Islamic Jurisprudence as well. As far |p Islamic Jurisprudence is concerned, the word of benefit of doubt has been entrusted with more force as compared to one as stated above. In the verse of Holy Qur'an:*

*Despite the fact that the word "Adal" has been used, which is more comprehensive in its composition, but still the word "Ihsan" has been added, which clearly depicts that in Islam, the element of mercy has attained very high value and the same on its analogical interpretation be termed as what has been stated above and which is cardinal principle of English and Latin jurisprudence, [p. 6] A*

*If a person is acquitted of the charges by extending the benefit o doubt, it does not mean that involvement of accused was an outcome o malice on the part of the complainant; rather the same would be deficie to convict as an abundant caution, because liberty of a person is a inalienable right, which cannot be snatched and if anything comes favour of the accused, that is to be extended in his favour as a matter o right, therefore, mere acquittal of accused from the criminal case doe not bring his case within the ambit of malicious prosecution, [p. 7] B*

***Altaf Gohar v. Wajid Shams-ul-Hassan PLD 1981 Kar. 515j Muhammad Akram v. Mst. Farman B PLD 1990 SC 28; Syed Ahme Saeed Kirmani v. Messrs Muslim Commercial Bank Ltd. Islamabad 199 SCMR 441; Muhammad Yousaf v. Syed Gayur Hussain Shah 199 SCMR 1185; Sufi Muhammad Ishaque v. Metropolitan Corpora do Lahore through its Mayor PLD 1996 SC 737; Sub. (Retd.) Fazale Rahi v. Rub Nawaz 1999 SCMR 700 and United Bank Ltd. v. Raja Ghula Hussain and others 1999 SCMR 734 ref.***

***Government of the Punjab through Secretary, Heal Department, Lahore v. Salamat Ali Khan PLD 1991 SC 699; Sh Hassan v. The State PLD 1959 SC (Pak) 480; Sadaruz Zaman v. Sta 1990 SCMR 1277; Feroze Khan v. Fateh Khan and 2 others 1991 SCV 2220 and Mahmood Akhtar v. The Muslim Commercial Bank Ltd. a another PLD 1992 SC 240 rel.***

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# P L D 2012 Balochistan 22

*Before Muhammad Hashim Khan Kakar and Ghulam Mustafa Mengal, J J*

**GUL MUHAMMAD**—***Appellant versus THE STATE—Respondent***

***A.T.A. Criminal Appeal No.6 of 2007 and A.T.A. Murder Reference No. 1 of 2007, decided on 29th September, 2011.***

***(a) Penal Code (XLV of I860)—***

*—S. 302(b)—Anti-Terrorism Act (XXVII of 1997), S. 7(a)—Qatl-e-amd and act of terrorism—Appreciation of evidence—Both the witnesses though were closely related to each other as well as to the deceased persons, but relationship by itself was not sufficient to brush aside their evidence when they had fully supported the prosecution version and the defence had failed to create any dent in their veracity—Said witnesses were residents of the same village and their presence at the time and place of occurrence, could not be doubted by any degree of seriousness—Accused and the prosecution witnesses being related and known to each other and it being a case of sole accused, neither any question of mistaken identification .nor substitution, would arise— Evidence of prosecution witnesses did not suffer from any material contradiction or discrepancy and was consistent with the probabilities, materially fitting in with other evidence; more particularly the medical evidence and supported by the recovery of crime weapon from possession of accused and positive report of Firearm Expert***— Complainant was declared hostile by the prosecution to the extent of not identifying of accused before the court, but it was of no significance, as parties had entered into compromise,** *which was also admitted before the Trial Court—Positive report of Firearm Expert had corroborated the ocular evidence furnished by prosecution witnesses— Prosecution, in circumstances had succeeded to prove its case against accused beyond the shadow of doubt, [p. 27] A*

*(b) Anti-Terrorism Act (XXVII of 1997)—Preamble & S.6(2)(g)~-Penal Code (XLV of 1860), S. 302(b)—Qatl-e-Amd—**"Terrorism"—Allegation of "Siyahkari"**—Jurisdiction of Anti-Terrorism Court—Any offence, where the offender would take the law in his own hands and awards punishment, that offence would fall within the purview of Anti-Terrorism Act, 1997—Venue of the commission of a crime, the time of occurrence, the motive and the fact that whether or not said crime had been witnessed by public at large, were not the only determining factors for deciding the issue, whether a case did or did not fall within the parameters of Anti-Terrorism Act, 1997—Crucial question would be whether said crime had or had not the effect of striking terror or creating a sense of fear and insecurity in the people or any section of the people—Accused, in the present case, had committed the murder of three innocent people on the false allegation of 'Siyahkari', while taking the law in his own hands, such act certainly would have created a sense of fear, panic and terror amongst the villagers—No licence could be granted to anyone to take the law of the land in his own hands and start executing the culprits himself, instead of taking them to the court of law—Murder based on "Ghairat" did not furnish a valid mitigating circumstance for awarding a lesser sentence—Killing of innocent people, specially the women on to pretext of 'Siyahkari' was un-lslamic, illegal and unconstitutional— Under S.6(2)(g) of Anti-Terrorism Act, 1997, in case of unjustified murder by a person, who on account of his immorality or to satisfy his brutal instinct, would take the law in his own hands, was responsible for creating sensation and panic in the society—Offences committed on the pretext of 'Siyahkari' would fall within the domain of Anti-Terrorism Act, 1997, and all the cases pending before the ordinary courts would stand transferred to the Anti-Terrorism Courts, [pp. 28, 29, 30] B,C&D*

***Holy Quran Sura XXIV (NUUR) Verses 4; Hadith 837 [Book 48] (Sahih Bukhari) and PLD 2001 SC 96 rel.***

*(c)* ***Penal Code (XLV of I860}——Ss. 302(b) & 311—Anti-Terrorism Act (XXVII of 1997), Preamble & Ss.6(2)(g), 7(a)—Criminal Procedure Code (V of 1898), S.345— Qatl-e-amd—Tazir after waiver or compounding of right of qisas in qatl-e-amd—Anti-Terrorism Act, 1997*** *was enacted for prevention of terrorism, sectarian violence and speedy trial of heinous offences—Said Act being a special law, private complainant or the legal heirs of the deceased, had no right to compound the "scheduled offence" as those offences were mainly against the State and not against individuals—*

*Offences could not be compounded automatically by legal heirs, but were always through the court; and the court could decline the permission to compromise the offence by the legal heirs of victim— Even the ordinary courts under S.311, P.P.C., could punish accused, if the offence had been compounded, by the legal heirs, on the basis of "Fdsad-Fil-Arz"— Not providing the right to compromise the offence by the legal heirs of deceased, was neither violation of Islamic Injunctions; nor of any fundamental rights, [p. 30]*

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# 2012 Y L R 372

***[Sindh]***

*Before Salman Hamid, J*

**GHULAM AKBAR**—*Applicant versus THE STATE—Respondent*

*Criminal Bail Application No.S-33 of 2011, heard on 4th February, 2011.*

***Criminal Procedure Code (V of 1898)— (stolen government drugs, Bail Refused)***

*S. 497—Penal Code (XLV of I860), Ss.380 & 411—Theft in dwelling house, dishonestly receiving stolen property— Bail, refusal of—Accused was found in possession of the stolen government drugs and in use thereof in his clinic, which had shown blatant and remorseless attitude of accused—Person with such an attitude was likely to "repeat" .the same offence, if released on bail—F.I.R. clearly mentioned that the complainant and others were looking for, the stolen drugs and immediately upon receiving information and finding accused in possession and using of stolen drugs at his clinic, instantaneously lodged the F.I.R.— Explanation given for delay, was reasonable and plausible—Grounds prevailed with the courts below for enlarging co-accused on bail, were that his name was not mentioned in the F.I.R. and that his arrest was not made on the spot; as against that, the contents of the F.I.R. would show that accused was caught red* handed in his clinic dealing with the stolen* **drugs,** *belonging to the government—Bail application of accused was dismissed, in circumstances, [p. 374] A*

***Tarique Bashir and 5 others v. The State PLD 1995 SC 34*** *distinguished.*

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# 2012 Y L R 273

***[Sindh]***

*Before Shahid Anwar Bajwa and Muhammad Ali Mazhar, J J*

**GUL MUHAMMAD alias GUL JAN**—Applicant versus THE STATE—Respondent

Criminal Bail Application No.D-476 of 2011, decided on 20th October, 2011.

***(a) Criminal Procedure Code (V of 1898)— (Joint Firing/Common Intention, Bail Refused)***

*S. 497—Penal Code (XLV of 1860), Ss.302/324/ 384/ 395/ 397/ 337-H(2)/ 511/ 148/149—Qatl-e-amd, attempt to commit qatl-e-amd, extortion, dacoity, robbery, doing act rashly or negligently—Bail, refusal of—**Specific role** had been assigned to accused in the F.I.R. to the effect that **he along with two other accused, directly fired upon the brother of the complainant with Kalashnikov**—Twenty two empties of Kalashnikov were recovered from the place of incident—**Two persons lost their lives** and one was severely injured—Incriminating weapon was recovered from accused, which had shown that he along with other co-accused formed an unlawful assembly with their common object to commit*

*murder of two persons—Investigating Officer after investigation had stated that there was no evidence against accused nominated in the counter F.I.R.—Said counter F.I.R. was an afterthought, which was filed by concealing the factum of murder of two persons and the injures sustained were suppressed—Reasonable grounds were available to believe that accused was guilty of offence—Bail application was dismissed, in circumstances.*

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# 2012 Y L R 45

***[Sindh]***

*Before Shahid Anwar Bajwa, J*

**ABDUL WAHAB alias TALBAN**—Applicant versus THE STATE—Respondent

Bail Application No.987 of 2011, decided on 30th August, 2011.

**(a)** ***Criminal Trial—Person subsequently joining the accused in the crime—Liability— if a person subsequently joins in crime, he is to be burdened with the same liability***

***Ahmed Hussain alias AMI am others v. The State and others PLD 2008 SC 110 ref.***

***Criminal Procedure Code (V of 1898)—*** **(Bail Refused)**

***—S. 497—Penal Code (XLV of 1860), Ss.371-A, 371-B, 376 & 511—Prostitution/ rape—Bail, refusal of—****Two girls had been abducted, brought to the city, lodged in a house in an ill-reputed locality and pressed into prostitution—Some Police personnel had allegedly committed zina with the girls—Present accused, also a Police Official, regularly visited the said place—Police was duty bound to protect the citizens and to prevent commission of crime—Mere presence of a Police personnel at a particular place might at the one hand act as a deterrent for those who wished or intended to commit a crime and might on the other hand be seen in the circumstances as protection being provided by the Police to the criminals—Accused being a Police personnel had visited a place in an ill-reputed locality, where abductees were lodged and pressed into prostitution—Accused, therefore, was not entitled to discretionary relief of bail and the same was declined to him accordingly.*

***Dr. Muhammad Aslam v. Th State 1993 SCMR 2288; Shahid Ali v. Tfc State 2006 YLR 1866; Zafar Iqbal v. Th State 2002 MLD 454; Manzoor and others v. The State PLD 1972 SC 81 an Ahmed Hussain alias AMI and others \ The State and others PLD 2008 SC 110 rel***

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# 2012 YLR 88

***[Lahore]***

*Before Ijaz Ahmad, J*

**MANZOOR HUSSAIN**—*Petitioner versus THE STATE and another—Respondents*

*Criminal Miscellaneous No.364-CB of 2010, decided on 27th April, 2011.*

***Criminal Procedure Code (V of 1898)—***

*—S. 497(5)—Penal Code (XLV of 1860), Ss.302/ 148/ 149— Qatl-e-amd— Bail, cancellation of—Accused and his co-accused had allegedly clubbed the deceased resulting in injuries— Postmortem report had shown that a large C fleshy area of the body of the deceased was subjected to continuous ruthless beating in a gruesome manner—Cause of death was cardio-pulmonary failure due to massive and severe beating and infliction of constant injuries, which had revealed the real intention of the accused to kill the deceased—Victim had been minced and grilled in a manner which had left no reason for allowing the accused to continue enjoying the concession of bail-Court was not bound by the ipse dixit the*

*police in declaring the accused innocent during investigation—Accused had already been summoned in the private complaint to face trial—Bail granted to accused by Sessions Court was cancelled in circumstances, [p. 89]*

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# 2012 Y L R 381

***[Lahore]***

*Before Shahid Hameed Dar, J*

**MUHAMMAD FAROOQ** ***alias PANNA—Petitioner versus THE STATE and another—Respondents***

***Criminal Miscellaneous Nos.9099-B and 10064 of 2011, decided on No.23rd September, 2011.***

***(a) Criminal Procedure Code (V of 1898)— (Murder, indiscriminate firing, desperate, bail refused)***

*—S. 497—Penal Code (XLV of 1860), Ss.302/ 324/ 148/ 149/ 109— Qatl-e-amd, attempt to commit qatl-e-amd, abetment— Bail, refusal of—Accused joined by his co-accused had committed a gruesome offence being armed with deadly weapons and gunned down seven persons at the festivity ceremony of "Rasm-e-Hina" of brother of the complainant—Indiscriminate firing by accused did not make any distinction between their foes and strangers and even killed an electrician at the spot, who was busy in installating decoration lights on the house and had nothing to do with the rivalry between the parties—Some other persons present in the street had also received firearm injuries as a result of said firing by the accused—Accused was a hardened and desperate criminal who along with the co-accused had turned a joyous festival into a wailing scenario within no time—Complainant had also been murdered when co-accused had absconded—Case of accused was hit by the exceptional clause of the fifth proviso to S.497, Cr.P.C.—Bail was declined to accused, in circumstances, [p. 383] A*

***Mashkoor v. The State 2009 PCr.LJ 110 and Wajid Ali v. The State 2009 PCr.LJ 275 ref.***

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# 2012 Y L R 460

***[Lahore]***

*Before Syed Ejaz Hussain Shah, J*

**MUHAMMAD HUSSAIN**—***Petitioner versus Additional Sessions Judge/Justice of peace D.G.Khan***

*Writ* ***Petition No.7214 of 2011, decided*** *on* ***13th June, 2011.***

***Criminal Procedure Code (V at 1898)— (Registration of case Refused)***

*—S. 22-A—Constitution of Pakistan, Art. 199— Constitutional petition- Registration of criminal case—Petitions approached the Police for registration of ' criminal case against the respondent, but Police having not registered case, petitioner filed application before Justice of Peace under S.22-A, Cr.P.C. for issuance of direction to S.H.O. concerned to register the case—Said application was dismissed by Justice of Peace—Validity— Justice of Peace, after considering the report of S.H.O., dismissed application observing that the petitioner might file a private complaint—Impugned order had been passed by Justice of Peace with full application of judicious mind after getting the report/comments of the Local Police and same was a speaking order, which did not call for any interference by High Court—Order of Justice of Peace was upheld, [pp. 461, 463] A, B & C* ***Muhammad Bashir v. S.H.O. and others PLD 2007 SC 539; Muhammad Mushtaq v. Additional Sessions Judge, Lahore and others 2008 YLR 2301 and Habibullah v. Political Assistant, Dera Ghazi Khan and others 2005 SCMR 951 ref.***

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# 2012 Y L R 472

***[Lahore]***

*Before Abdul Waheed Khan, J*

**MUHAMMAD BABAR KHAN GHUMMAN**—*Petitioner versus STATION HOUSE OFFICER and 4 others—Respondents*

*Writ Petition No.l6617/Q of 2011, decided on 18th July ,2011.*

***Penal Code (XLV of 1860)----*** ***(Quashing of FIR, Refused)***

***—Ss. 420/406—****Constitution of Pakistan, Art. 199— Constitutional petition— Criminal breach of trust, cheating—Quashing of F.I. R.—Petitioner had sought quashing of F.I.R. on the ground that registration of F.I.R. was result of mala fide on the part of the complainant as well as the Police and that petitioner had committed no offence—Truthfulness or falsehood of allegations contained in the F.I.R., could only be ascertained during the course of investigation or after the filing of report under S.173, Cr.P.C. to a court of competent jurisdiction—Practice of quashing the F.I.R., by High Court, in exercise of constitutional jurisdiction, was not approved—Remedies available to accused were to appear before the Investigating Officer to prove his innocence and to approach the competent higher authorities of the Investigating Officer having powers vide S.551 of Cr.P.C.—After completion of the investigation, the Investigating Officer had to submit case to the concerned Magistrate; and the Magistrate had power to discharge accused under S. 63 of Cr.P.C. in case of their innocence--- in case Magistrate would find the accused innocent, he would refuse to take cognizance of the matter—Rule. 24.7 Police Rules, 1934 had made a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate—Remedies for accused who claimed to be innocent were available who could* seek *relief without going through the entire length of investigations, [p. 473] A,* ***B & C***

**Col. Shah Sadiq v. Muhammad Ashiq and others 2006 SCMR 276 rel.** *It was held as under:-*

*"It is pertinent to mention here that established practice before the creation of country was that learned High Courts were very reluctant to quash the proceedings under constitutional jurisdiction. The object and reason behind this practice was that the High Courts had to quash the proceedings summarily which would create chaos due to the following reasons:*

*(i) All the procedure and authorities prescribed under Cr.P.C. would become redundant.*

*(ii) To interfere in the sphere allotted to the executive organ.*

*(iii) There is every likelihood of injustice in a summary disposal.*

*(iv) The cases are quashed at initial stages then it would create law and order situation as the people may resort to taking revenge from the opposite party.*

*(v) Deviation from the past practice is always dangerous.*

*(vi) Superior Courts always keep judicial restraint in view of Article 4 of the Constitution, read with Article 5(2) of the Constitution."*

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# 2012 P.Cr.R. 20

. *(Pakistan Current Criminal Rulings)*

***[Lahore]***

**Present:** *CH. IFTIKHAR HUSSAIN, J.*

**Sakhawat** alias **Safdar** alias **Chaboo** Versus *The State and another*

*Criminal Miscellaneous No. 2181-B of 2011, decided on 7th April, 2011*

***CONCLUSION (1) Opinion of police, if any, is not binding upon the Court.***

***BAIL (ABDUCTION / MURDER) (Opinion of police)***

***Criminal Procedure Code (V of 1898)---****S. 497—Pakistan Penal Code, 1860, Ss. 364/302/201 Petitioner along with named co-accused allegedly abducted son of complainant, who later on was reported to be dead--- Bail plea—Opinion of police—Contention was that petitioner was found to have abetted his co-accused during course of investigation—Held: Opinion of police, if any, was not binding upon Court—Petitioner was named in F.I.R Alleged offence did fell within prohibitory clause—Bail After arrest refused.*

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# 2012 P.Cr.R. 115

. *(Pakistan Current Criminal Rulings)*

***[Lahore]***

**Present:** *RAUF AHMED SHEIKH, J.*

**Farman Ali Shah** Versus *The State and another*

*Criminal Miscellaneous No. 3352-B of 2011, decided on 7th April, 2011.*

***BAIL — (Rape)***

***Criminal Procedure Code (V of 1898)—***

***—S.*** *497—Pakistan Penal Code, 1860,* ***S.*** *376—Allegation was that petitioner subjected victim/sister of complainant to* ***rape under the cover of spiritual treatment "DUM"****—Heinous offence—Bail plea—****Held:*** *Petitioner was specifically nominated in F.I.R.—M.L.R. and said statements of victim and complainant* prima facie *proved that petitioner was connected with offence alleged—Petitioner was not entitled to bail—Bail after arrest refused.*

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# 2012 P.Cr.R. 58

. *(Pakistan Current Criminal Rulings)*

***[Lahore]***

**Present:** *IJAZ AHMAD CHAUDHRY, CJ. and MAZHAR IQBAL SIDHU, J.*

**Fazal Abbas** Versus ***The State***

*Criminal Appeal No. 1933 of 2005 and Murder Reference No. 171 of 2006, decided on 11th May, 2011.*

***(Irregularities and lapses on part of investigation officer are liable to be ignored)***

***(a) Investigation—****Police Rules—Mandate—It is the duty of police officer to dig out the truth and bring the real culprit to justice.*

***(b) Criminal Trial—Element of absconsion—Principles: (i) Antecedents of the absconder; (ii) His occupational habits; (iii) Limitations; (iv) Period of absconsion; (v) Specific explanation for absconsion; (vi) Evidence of absconsion*** vis-a-vis ***the allegations levelled. (Para 24) Ref. 2003 P.Cr.L.J. 64.***

*(c)* ***Corroboration, rule of****—It is not an absolute rule of law and the same is a rule of prudence but always the same is neither required in a case nor its non-availability in a case makes the prosecution case doubtful. (Para .23)*

*(d)* ***Ocular account****—Appreciation of evidence—Rule—Where the presence of the eye-witnesses is established beyond shadow of doubt with reasons and the statements are consistent to the facts and circumstances of the case and have also stood tested on the litmus test of cross-examination and the Court is persuaded to believe their statements in the circumstances of the case then therefore is no need of any independent corroboration and in these circumstances statement of a worse enemy witness is liable to be believed.*

***[While passing through in front of Haveli and with no immediate annoyance, deceased was gunned down by appellant Impugned conviction/sentence of death was upheld].***

***Ref. 1995 SCMR 1365, 2007 PSC Crl. (SC Pak.) 122 = 2007 SCMR 641, 2009 PSC Crl. (SC Pak.) 76 = 2009 SCMR 471, 2008 PSC Crl. (SC Pak.) 518 =*** PLJ 2008 ***SC*** 641, 2003 ***P.Crl.LJ. 64.***

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# 2012 P.Cr.R. 126

*(Pakistan Current Criminal Rulings)*

***[Rawalpindi]***

*Present: CH. MUHAMMAD TARIQ, J.*

**Shoaib Shahid** Versus The State and another

***Criminal Miscellaneous No. 823-B of 2011, decided on 30t June, 2011.***

***(1) Ipsi dixit of the police is not binding on the Courts.***

**Criminal Procedure Code (V of 1898)—** ***BAIL — (Ipsi dixit of police*****)**

*—S. 497(2)—Pakistan Penal Code, 1860, Ss. 302/34/337-A(ii)/337-F(i)~-Petitioner allegedly* ***murdered his real paternal uncle by firing a shot which hit him on chest and thereafter, he gave repeated/various blows with the grip/butt of his pistol on various parts of body of deceased****—Bail plea—***Ipsi dixit** *of police—Validity—Petitioner was nominated in F.I.R. with specific role—PWs fully corroborated occurrence in question while making statements before i.O. under Section 161, Cr.P.C.--Petitioner could not derive any benefit out of his mere statement that petitioner was juvenile while according to police record, age of petitioner was about 18/19 years-It was not fatal to prosecution that I.O. had declared petitioner as innocent and he had been placed in column No. 2—***ipsi dixit** *of police is not binding on the Courts, particularly when petitioner was nominated in F.I.R. with specific role which was duly supported by post-mortem report—Offence alleged fell within prohibitory clause—****Bail after arrest refused****.*

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# 2012 P.Cr.R. 147

*(Pakistan Current Criminal Rulings)*

***[Karachi]***

**Present:** *TUFAIL H. IBRAHIM, J.*

**Ali Zaman** **Versus** ***The State***

***Criminal Bail Application No. 393 of 2011, decided on 27th April, 2011.***

***In such type of crimes of narcotics against the society, concession or leniency in granting bail on the ground of delay should be dealt with strictly.***

***Criminal Procedure Code (V of 1898)— (Narcotics/Delay in trial) BAILRefused***

*—S. 497—Control of Narcotic Substances Act, 1997, Ss. 6, 9(c)—Narcotic offence—Arrest on spot—Bail plea—Delay in trial—Offence against society—Held: Applicant had been arrested alongwith a plastic bag containing 3.85 kgs of charas from his personal possession—Said contraband was recovered from applicant on spot in presence of police officials—Generally in our society, passerby due to fear and apprehension of criminals, police and even appearing in Courts of law are not inclined to act as mashirs—Even otherwise, association of private mashirs within meaning of S. 103, Cr.P.C. has specifically been not made applicable to cases falling under C.N.S. Act—There was sufficient material available on record to associate applicant with commission of heinous offence—Further held, such type of crimes are on the rampant and against the society— Concession or leniency in granting bail on grounds of delay should be dealt with strictly in accordance with law looking into all the prevailing circumstances of the case—Bail after arrest refused.*

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# 2012 P.Cr.R. 153

*(Pakistan Current Criminal Rulings)*

***Peshawar [D.I. Khan]***

*Present: SYED SAJJAD HASSAN SHAH and KHALID MEHMOOD KHAN, JJ.*

**Rahat Khan *alias* Rait Khan** *Versus The State and another*

*Criminal Appeal No. 91 of 2009, decided on 8th September, 2011.*

***Un-explained absconsion of accused*** *for a long time is a strong corroborative piece of evidence against him.*

**Motive**--*Non-proving of—Principle—It is not fatal if the motive is not proved, however, if there is other evidence available, which is straightforward, consistent, convincing, corroborated by medical evidence. (Para 13)* **Ref.** *NLR 2011 Criminal 436.*

## MURDER — (Solitary PW/eye-witness)

***Criminal Procedure Code (V of 1898)—****—S. 410—Pakistan Penal Code, 1860, S. 302(b)—Murder trial—Impugned conviction/sentence of; life—Motive/solitary eye-witness/PW—Appreciation of evidence—Validity-Occurrence had taken place in daylight, hence question of misidentification of appellant and that of co-accused being co-villager did not arise—Report was promptly lodged in Hospital as soon as injured/deceased was brought there— Recovery of blood-stained earth and three empties also corroborated version of prosecution regarding place of occurrence—Presence of complainant/solitary PW on spot had been proved without any shadow of doubt—There was nothing on record but complainant due to some personal grudge or ulterior motive had charged appellant for personal gain or for any other enmity—It is not fatal if the motive is not proved however if there is other evidence available, which is straightforward, consistent, convincing, corroborated by medical evidence—Un-explained long abscondence of appellant/accused was strong corroborative evidence in instant case—**Criminal appeal dismissed**. (Paras 12,13,14,15)* ***Ref. NLR 2011 Criminal 436.***

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# 2012 P.Cr.R. 161

***[Rawalpindi]***

***Present:*** *KH. MUHAMMAD SHARIF, CJ.*

**Sabaz Ali Khan** ***Versus*** *The State*

***Criminal Appeal No. 166 of 2008 and M R . No 21 of 2008, decided on 28th December, 2010.***

*(1)* ***Commission of murder at the spur of moment for nonpayment of wages by the deceased. A case for mitigation of sentence is made out.***

### *MURDER — (Quantum of sentence)/ Solitary Statement*

***Criminal Procedure Code (V of 1898)****—S. 410—Pakistan Penal Code, 1860, S. 302(b)—Murder-Quantum of punishment—Mitigating circumstance—Validity- Appellant when came at his job he was empty-handed—Then altercation took place and hot words were exchanged--Appellant took iron rod from said room and caused injuries to deceased mate—It was appellant's first version even at time of his arrest—Impugned death sentence was converted to life imprisonment—Sentence reduced. (Para 7)* ***Ref:*** *1983 SCMR 922.*

***Appreciation of evidence****—Court has to see the quality of evidence and not the quantity. (Para 7)*

*(b)* ***Solitary witnesses****—-Conviction on a capital charge can be maintained even on statement of the solitary witness if rings true, confidence inspiring and had com from an impeachable source.*

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# *2012 P.Cr.R. 167*

*(Pakistan Current Criminal Rulings)*

***[Lahore]***

*Present: IJAZ AHMAD CHAUDHRY and MAZHAR IQBAL SIDHU, JJ.*

**Shabbir Hussain,** ***etc. Versus The State***

CSR No. 26-T of 2009, Criminal Appeal No. 1275 of 2009 and Criminal Appeal No. 853 of 2011, decided on 1st June, 2011.

***Anti-Terrorism Act (XXVII of 1997)—*** ***MURDER — (Circumstantial evidence)***

*—Ss. 25, 7, 21-*L *r/w Ss. 302/365/34, PPC—Murder-Impugned conviction/****sentence of death****—Circumstantial evidence—Appreciation—Validity—So far as* ***non-producing of evidence of telephonic calls was concerned, the same had*** not ***caused any hazardous to prosecution case****—Originally* case *was* ***lodged u/s. 365-A, PPC*** *and complainant was not foreseeing any untoward and certainly complainant might* give *ransom amount as demanded complete or less but after registration of case, appellant was arrested on same day, on being interrogated, he on his own made a disclosure and* ***got*** **dead-*body recovered*** *from a place which was in his exclusive possession and knowledge and his co-appellants---There was found no ill-will,* mala fide *or malice on part of I.O/PW in instant case that he being hostile towards appellant had concocted false evidence—All the said series connected appellant with commission of offence in question—Deceased was unaware to the place where he* was *deceitfully taken, kept and was murdered—Prosecution fully proved its case against appellant beyond any* shadow *of doubt—Criminal appeal dismissed. (Paras* 11, 12, 14)

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# *2012 P.Cr.R. 187*

*(Pakistan Current Criminal Rulings)*

***[Lahore]***

***Present:*** *IJAZ AHMED CHAUDHARY, CJ., and MAZHAR IQBAL SIDHU, J.*

**Faqir Muhammad and another** Versus **The State**

*Criminal Appeal No. 1823 of 2005 and Murder Reference >. 669 of 2005, decided on 16th June, 2011.*

**CONCLUSION**

***There is no compulsion in the eye of law not to believe a chance witness but the prime condition for the same is that the presence of the chance witness in the circumstances of the case would be relevant, natural, just and convincing***

## *MURDER — (Appreciation of evidence) Principle of "res-gastae" and "res ipsa loquitor"—*

***(c) Criminal Procedure Code (V of 1898)---***

*—S. 410—Pakistan Penal Code, 1860, S. 302(b)—Qanun-e-Shahadat Order, 1984, Art. 19—Commission of triple murder—Impugned conviction/sentence of death—Principle of* **"res-gastae"** *and* **"res ipsa loquitor"—** *Appreciation of evidence—Validity—Incident was reported to police without any delay—F.I.R. in that respect was taken as sacrosanct piece of evidence—Prosecution had proved its case against appellants beyond any shadow of doubt—In that respect principle of law* **"res ipsa loquitor"** *(a man may tell a lie but the circumstances do not) became operational—It was not case of prosecution that said PWs had come at place ofoccurrence per chance or on day of occurrence or they we aliens but they had come a day prior to happening incident—Said PWs had no reason either to become false witness or to make false statements against appellants During cross-examination, said PWs remained consistent, no major contradiction or improvements had been found by High Court—Non-else had committed blood-shed except appellants—Police officials were as good witnesses as anybody else—During cross-examination of said PWs, no major contradiction or improvements had been found by High Court—Report of ballistic expert revealed that empty taken into possession at time of recovery of carbine had* been *found from barrel of said carbine—Prosecution had fully proved its case against appellant beyond any shadow of doubts—Criminal appeal dismissed. (Paras 16, 19, 20, 22, 30)*

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# *2012 P.Cr.R. 208*

*(Pakistan Current Criminal Rulings)*

***[Rawalpindi]***

***Present:*** *KH. MUHAMMAD SHARIF, CJ., and SHAHID HAMEED DAR, J.*

**Muhammad Zubair** ***Versus*** ***The State***

***Murder Reference No. 321 of 2007, Criminal Appeal No. 43 of 2006 and Criminal Appeal No. 473, decided on*** 25 ***October, 2010.***

## *MURDER — (Case of single accused)*

(a) ***Criminal Procedure Code (V of 1898)—***

*—S. 410—**Pakistan Penal Code, 1860, S. 302(b)—**Murder Impugned conviction/sentence of death— confirmed.*

***Substitution, phenomena of****— The substitution of an accused is a rare phenomena in our system of dispensation of criminal justice.*

***Appreciation of evidence****—This is the fundamental principle of Qanun-e-Shahadat that a* ***positive suggestion****, replied in affirmative by PW, shall be* a *circumstance, deemed to have been admitted by the accused. (Para 18)*

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# *2012 P.Cr.R. 232*

*(Pakistan Current Criminal Rulings)*

***[Karachi]***

*Present: SHAHID ANWAR BAJWA, J*

. **Muhammad Zahoor** *and 3 others* ***Versus*** *The State through FIA, Karachi*

*Criminal Bail Application Nos. 256, 257 and 259 of 2011, decided on 28th March, 2011.*

***Word "dishonestly" is defined in Section 24, PPC and means doing something for causing wrongful gain or wrongful loss.***

***Criminal Procedure Code (V of 1898)—*** ***BAIL- (Wrongful loss to public exchequer)***

*—S. 497—Pakistan Penal Code, 1860, Ss. 409/420/468/471/109 r/w S. 5(2)/47, PCA—Loss to public exchequer—Allegation was that property was purchased at (an exorbitant amount and thereby a wrongful loss was caused to NICL—Bail plea—Contention was that decision for purchase was made in meetings of the Board of Directors and none of petitioner was a member of the Board of Directors—Held: Board of Directors acted on basis of information or report furnished to it by managerial hierarchy--None of applicants pleaded that they were forced by hierarchy, authority or any member of the Board to give a dishonest report to the Board—Stated opinion had been disowned by EDO by subsequent letter stating that opinion stated to be signed was not signed by him and his signatures were forged ones—As responsible officers of the Organization it was the applicants who were entrusted with responsibility to submit report to the Board and negotiate to help form opinion and organization's management's evaluation for the Board—There were reasonable grounds to believe that such recommendations were based on documents which were either forged or were managed being without any scientific basis or report accompanying them— Applicants being officers entrusted with responsibility of settling the price at which land in question was purchased had a kind of dominion over the property of NICL—Bail after arrest refused. (Paras 7, 8, 13, 14)*

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# 2012 P.Cr.R. 289

*(Pakistan Current Criminal Rulings)*

***[Lahore]***

**Present:** ***SARDAR TARIQ MASOOD and MANZOOR AHMAD MALIK, JJ.***

**Zahid Iqbal** Versus ***The State***

*Criminal Appeal No. 199-J of 2005 and Murder Reference No. 628 of 2005, decided on 23rd June, 2011.*

***Identification parade*** *is a test which can save the innocent person but on the other hand it is very strong evidence against the culprits.*

***Motive is not necessary*** *for committing the murder. Motive is always in the mind of the accused.*

*Appellant committed* ***murder of three innocent persons in a callous manner****. Ocular account was fully corroborated by identification parade, medical evidence and recoveries etc. impugned conviction/sentence of death was maintained.*

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# PLJ 2012 Lahore 95

***[Bahawalpur Bench Bahawalpur]***

***Present:*** *Abdus Sattar Asghar, J.*

***BAKHT BEDAR ALI SHAH****-Petitioner* ***Versus*** ***STATE and 5 others-Respondents***

***W.P. No. 3595 of 2011, decided on 4.7.2011.***

***Criminal Procedure Code, 1898 (V of 1898)*** ***(Agree or Disagree with Cancellation Report, Judicial Order)***

*....Ss.190, 435 & 439-Constitution of Pakistan, 1973, Arts. 175(3) & 199 Pakistan Penal Code (XLV of 1860), S. 336-Injury was declared as* ***itlaaf-i-salahyyat-i-udu--Recommendation*** *to cancel the case Magistrate disagreed with cancellation report-Innocence or guilt of accused will be determined after recording of prosecution evidence....Revision was also dismissed--Challenged through constitutional petition--Before separation of judiciary from executive, Magistrates used to try criminal cases as part of executive--Validity-An order passed by Executive Magistrate before taking cognizance U/S. 190, Cr.PC. was considered an administrative and not a judicial order not revisable u/Ss. 435 & 439, Cr.P.C.-In changed state of affairs, an order passed by a judicial magistrate is to be considered a judicial act thus revisable u/Ss. 435 and 439, Cr.P,C.-Legality and proprietyof such an order can also be looked into by High Court u/Art. 199 of Constitution r/w S. 561-A, Cr.P.C.-Cancellation report falls within ambit of S. 173, Cr.P.C. therefore, Magistrate has power to agree or disagree with report u/S. 173, Cr.P.C. in exercise of his lawful authority. [P. 97] A, B & C*

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# PLJ 2012 Lahore 18

***[Multan Bench Multan]***

*Present: SARDAR TARIQ MASOOD, J.*

**Faisal Ijaz**--- *Petitioner* **versus** STATE *and 3 others-Respondents*

*W.P.N0.1742 of 2011, decided on 9.3.2011.*

***Constitution of Pakistan, 1973—*** ***(Magistrate can not direct about adding offences)***

*—Art. 199-Criminal Procedure Code, (V of 1898), S.561-A... Constitutional petition-Direction to add S. 392, PPC...Judicial Magistrate had no authority to interfere into investigation—Beyond his jurisdiction-Validity-No powers were vested with courts including High Court to interfere into investigation or to direct SHO to submit report under such offence-Directing to investigating officer to add or omit penal section would amount to interfering with process of investigation which was not mandate of law, due to which apparently order of Judicial Magistrate to extent of directing I.O. for adding Section 392, PPC was illegal and without any lawful authority-Petition was allowed.*

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# PLJ 2012 FSC 47

***[Appellate Jurisdiction]***

*Present:* ***SHAHZADO SHAIKH,*** *DR.* ***FIDA MUHAMMAD KHAN &*** *Rizwan Ali Dodani****, JJ.***

***MUHAMMAD ASLAM*** *alias* ***ACHA*** *& others-Appellants versus STATE and another-Resp.*

*Crl. Appeal No. 2/L of 2007 and M.R. No.* ***3****/L of* ***2008,*** *decided on 20.7.2011.*

***Pakistan Penal Code, 1860 (XLV of 1860)--***

***S. 302****(b)-Conviction and sentence-Challenge to-****It was a night occurrence, but it took place in the light of bulb-Presence of electricity and related details had not been denied or questioned-It is surprising that organized gang of four habitual offenders could accomplish their assault in shortest possible time, as they already knew their victim by name*

*from whose house they could loot their booty particularly overpowering that Specific person, i.e., deceased who in fact died in their firing while he was manhandled, as such criminals do to the inmates of their targeted premises-Technical objections that the 1.0 had not followed the Police Rules during investigation-**There was delay in arranging identification parade,** do not adversely affect the ocular account, with all related corroborations-**Although Judicial Magistrate was not produced in Court as a witness,** as he had gone abroad, but his Reader verified necessary details of the identification parade-Although the accused were not convicted by the trial Court u/S. 17(4) Offences against Property (Enforcement of Hudood) Ordinance, VI of 1979, but had been convicted and sentenced u/S. 412 PPC-There was no enmity between the parties and there was **no** malafide **in lodging the FIR as the FIR was against unknown accused-**If there was any ma**lafide** on the part of the complainant party, they would have specifically nominated the accused in the FIR-Appellants had not been able to make out any case for interference with the impugned judgment by High Court-Impugned judgment delivered by the trial Court was upheld-Convictions and sentences awarded to appellants are maintained and appeal was dismissed. [Pp. 63, 64 & 65] A, B, D & E*

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# PL J 2012 Cr.C. (Lahore) 115

***Present:*** *Abdul Sattar Asghar, J.*

**ADNAN SHARIF**-*Petitioner versus STATE and another-Respondents*

*Crl. Misc. No. 9392-B of 2011, decided on 19.8.2011.*

***Criminal Procedure Code, 1898 (V of 1898)—*** ***(Two Sisters in wedlock, Marriage…. Void)***

*497-Pakistan Penal Code, (XLV of I860), Ss. 376/496-A-Bail, dismissal of--Unlawful conjunction of two sisters in wedlock-Prohibited and void marriage-**Juristic view of D.F. Mulla that unlawful conjunction of two sisters in wedlock at one time renders a marriage irregular is repugnant to the prohibition ordained by Almighty Allah in verse No. 23 of Surch Al-Nisa of the Holy Quran** whereby a Muslim is prohibited to have two sisters in wedlock at one and the same time-Therefore petitioner's marriage with 'M' was void and not irregular-Certainly maintenance of nuptial relations in result of a void marriage cannot be termed as lawful or valid-Therefore, attraction of offence u/S. 376 PPC in the attending circumstances does not call for any further inquiry-Offence u/S. 376 falls within the prohibitory clause-Petitioner therefore was not entitled to the concession of bail at this stage-Bail dismissed. [P. 118] A. **Ref. PLD 2004 Lah 365, Rel. 2009 P Cr. L J 982 LHR***

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# PLJ 2012 Cr.C. (Lahore) 118

***Present:*** *Mehmood Maqbool Bajwa, J.*

**SH. MAQSOOD IQBAL**-*Petitioner versus STATE etc…Respondents*

*Crl. Misc. No. 4754-B of 2011, decided on 13.6.2011.*

***Anticipatory Bail-*** ***(Direct Approach to High Court, barred , pre Arrest Bail)***

*-Ad-interim anticipatory bail-Petitioner failed to highlight reasonable, justifiable and exceptional circumstances endorsing his action directly approaching High Court to have the premium of anticipatory bail-Petitioner was admitted to ad-interim anticipatory bail protective in nature enabling him to approach the Court of first instance-Order granting ad interim anticipatory bail shall cease to have effect after Court hours-Applications for anticipatory bail had been disposed of by High Court on legal premises. [Pp. 122 &123]A&B*

***Ref.PLD 2009 Sc 427,2010 P Cr. L J 310, 2010 YLR 457, PLD 1974 Lah 256, 1991 SCMR 322, 1999 P Cr.L J 74, Rule 14 Chapter 10 High Court Rules & Orders Volume-III***

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# PLJ 2012 Cr.C. (Peshawar) 132

***[Abbottabad Bench]***

***Present*: *Attaullah khan, J.***

**ZAHEERA BIBI**-*Petitioner versus STATE and another-Respondents*

*Crl. M. No. 451 of 2011, decided on 17.10.2011.*

***Criminal Procedure Code, 1898 (V of 1898)—Confession/ Murder of Husband. Bail Refused***

***Ss… 497 & 164***-*Pakistan Penal Code, (XLV of 1860), S. 302-Bail, refusal of--Confessional statement-Accused/petitioner had made a confession before competent forum--Petitioner had clearly confessed, her guilt and disclosed the mode and manner of offence-Confessional statement connected the accused with the offence-Police recovered Scarf from the bath room of the house-Such scarf was used as weapon of offence-Recovery on the pointation of accused also connected her with the offence-Two children of accused had recorded their statements u/S. 161 Cr.P.C. in which they had deposed that the petitioner had committed the murder of their father-No ulterior motive had been established-Held: There was ample evidence against the accused in the shape of her confession, evidence of her own children and recovery of weapon of offence, which connected her with the offence so, she was not entitled to the concession of bail-Bail refused. [Pp. 134 & 135] A, B, C & D* ***2011 P.Cr.L.J. 1126.***

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# PLJ 2012 Cr.C. (Karachi) 135 (DB)

*Present: Shahid Anwar Bajwa and Muhammad Ali Mazar, JJ.*

**ALI ZAHIR JAFARI**-***Petitioner versus STATE-Respondent***

*Crl. Misc. No. 318 of 2002, decided on 4.8.2011.*

***Criminal Procedure Code, 1898 (V of 1898)-- 369-Court not to alter judgment-Sanctity of finality-Conditions-****Held! Whereby .the Courts have reviewed or recalled their judgments and orders without jurisdiction or passed without adjudication on merits and if the judgment or order was passed in violation of any law, the same can be recalled or reviewed under inherent powers of High Court. [P. 139] A*

***2000 MLD 1932 & PLD 2004 Karachi 652.***

***Rule of 'Stare Decisis**--* *Principle of law-Under the 'Satre Decisis' rule, a principle of law which has been settled by a series of decisions generally is binding on the Courts and should be followed in similar cases but this rule is not so imperative or inflexible preclude a departure therefrom in any case-Its application must be determined in each case by the discretion of the Court and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result. [P..140]* ***AIR 1958 SC 918***

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# PLJ 2012 Cr.C. (Peshawar) 140

***[Abbottahad Bench]***

***Present*: *Attaullah khan, j.***

**ABDUL GHAFOOR**-*Petitioner versus STATE & another-Respondents*
*Crl. M/Bail No. 490 of 2011, decided on 31.10.2011.*

***Criminal Procedure Code, 1898 (V of 1898) — (Statement U/S 164 / Charged with Zina)***

*-S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 365-B/376/494-Bail, dismissal of-Delay in FIR-Statement of victim was recorded u/s 164 Cr.P.C. showed that she has charged the present petitioner for forcible Nikah and commission of Zina-bil-Jabar ,Affidavit was available-Petitioner was connected with commission of offence which is heinous in nature-* ***Bail was dismissed****. [P. 142] A & B*

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# 2012 M L D 301

***[Peshawar]***

*Before Ejaz Afzal Khan, C.J.*

**INAM ULLAH**—***Petitioner versus EJAZ ALI SHAH and another—Respondents***

***Criminal Miscellaneous Bail Cancellation Petition No.323 of 2008, decided on 12th September, 2011.***

***Criminal Procedure Code (V of 1898)—***

*—S. 497(5)—Penal Code (XLV of 1860), Ss.302/324/34—Qatl-e-amd and attempt to commit qatl-e-amd—Bail, cancellation of—Accused was directly* ***charged for having effectively fired at the deceased and the injured****—Trial Court while deciding the bail petition of accused, not only embarked upon deeper appreciation of evidence, but also referred to certain statements which under no stretch of imagination benefited the accused—Data collected had clearly and squarely connected accused with the crime—Trial Court, appeared to have laboured hard to make out a case for the grant of bail, even on medical ground, despite nothing being on record in that behalf—Order granting bail being whimsical, arbitrary, capricious and even perverse, on the face of it, merited recall—****Bail granting order, was recalled****, in circumstances, [p. 303]*

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# 2012 MLD 333

***[Sindh]***

*Before Imam Bux Baloch, J*

**PATHAN and 2 others**—*Applicants versus THE STATE—Respondent*

*Criminal Bail Application No.S-773-of 2011, decided on 31st October, 2011.*

***Criminal Procedure Code (V of 1898)—***

*~~S. 497—Penal Code (XLV of 1860), Ss.302, 201, 311, 34 & 109— Qatl-e-amd, causing disappearance of evidence of offence,* ***Tazir after waiver or compounding of right of Qisas in qatl-e-amd—Bail, refusal of****—Accused, on the sole ground of delay in lodging the F.I.R., were not entitled to bail at the earlier stage—Courts had to be very careful and see that bail application was disposed of strictly according to law on merits keeping in view the distinction between tentative assessment and actual evaluation of evidence by the Trial Court—When material available on the record showed that case of accused persons fell within the prohibitory clause of S. 497, Cr.P.C, bail was refused, [pp. 335, 336]A&B*

***Muhammad Najeeb v. The State 2009 SCMR 448 distinguished, Naseer Ahmed v. The State PLD 1997 SC 347 rel.***

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# 2012 MLD 353

***[Sindh]***

*Before Ahmed Ali M. Sheikh, J*

**SHADAB AKHTAR** *and another—Applicants versus THE STATE-Respondent*

*Criminal Bail Application No.666 and M.A. No.3905 of 2009, decided on 24th February, 2011.*

***Criminal Procedure Code (V of 1898)—*** *—S. 498—Penal Code (XLV of 1860), Ss.342/337-A/ 332(c)/220/386/388/457—Police Order (22 of 2002),* ***Arts. 155/156— Wrongful restraint causing Shajjah****, commitment for trial or confinement by person having authority, extortion, lurking house-trespass by right, and misconduct by Police—Bail, refusal of—Names of accused persons appeared in the F.I.R.—Alleged abductee and almost all the prosecution witnesses had implicated the accused persons—Counsel for accused persons had contended that accused persons had been falsely involved in the case as complainant sons had been challaned by the Police in different cases, but counsel could not place any document on record to show as to whether son of the complainant had either lodged any case or acted as witness in any case registered against the accused persons—****Magistrate raided Police Station concerned and recovered all the alleged abductees****—Counsel for accused persons //t... failed to show any mala fide either on the part of the complainant party or the Police—Accused, in circumstances, were not entitled to extraordinary relief of pre-arrest bail—Bail application was dismissed and order granting pre-arrest bail to accused was recalled, [p. 355] A* ***Muhammad Arshad v. Muhammad Rafiq PLD 2009 SC 427 rel.***

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# 2012 M L D 377

***[Sindh]***

*Before Shahid Anwra Bajwa, J*

**MIR HASSAN—***Applicant versus THE STATE—Respondent*

*Criminal Bail Application No.S-1148 of 2010, decided on 21st November, 2011.*

***(a) Criminal Procedure Code (V of 1898)—*** *—S. 498—Penal Code (XLV of 1860), Ss.324/395/337-H(2)—Attempt to commit qatl-e-amd—****Pre-arrest bail, refusal of****—F.I.R. was very clear that the accused had* ***made a Kalshnikov fire on the injured person****—According to medical opinion it was a fire-arm injury—Minute assessment and extent of the said injury could not be determined at bail stage, as the same would amount to deeper appreciation of evidence—* ***Accused had allegedly pressed the trigger of his fire-arm and the bullet had hit the injured person—Whether the accused was such a crack shot that he could hit a moving fly in the air or it was only luck which had saved the victim,*** *was a question which could only be decided by Trial Court after recording evidence—Such like injury so close to eye, grating the temple and so close to ear could not be brushed aside by merely classifying it as "Shajjah-i-Khafifah ", because it was not a case of mere injury, but a case under S.324, P.P.C.—Sufficient material was available to prima facie connect the accused with the commission of the offence alleged in the F.I.R.—Pre-arrest bail was declined to accused in circumstances, [p. 381] A & C* ***Liaqat Ali v. The State 2004 PCr.LJ. 962 rel. Hamza Ali Hamza v. The State 2010 SCMR 1219 distinguished.***

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# 2012 P Cr.LJ33

***[Balochistan]***

*Before Muhammad Noor Meskanzai and Naeem Akhtar Afghan, J J*

**MICHAEL NAZIR** ***and others—Appellants*** *versus* ***THE STATE and others—Respondents***

***Criminal Appeals Nos. 86 and 89 of 2006, decided on 15th September, 2011.***

***(c) Penal Code (XLV of I860)—*** *Ss. 302(b) & 324—Anti-Terrorism Act (XXVII of 1997), Ss.6 & 7— Qatl-e-amd, attempt to commit qatl-e-amd and terrorism—Sentence, enhancement of—Intention—Scope—****Trial Court had proposed lesser punishment on the ground of lack of mens rea****—Criminal intention must exist to constitute a crime—"Intention" did not imply or assume the existence of some previous design or forethought but could be proved by or inferred from the act of accused and circumstances of the case—****Continuous firing by accused who was an educated person and fully aware of the consequences of his act, was reflective of his intention****—Unprovoked act of firing by accused on the vital part of deceased persons, led to irresistible conclusion that accused intended to cause the death of the victims—Evidence produced by the prosecution was straightforward, confidence-inspiring, cogent, consistent, unimpeachable, unshaken and had brought home the charge against accused to the hilt—Evidence did not suffer from any infirmity—In such state of affairs it was beyond imagination to conclude that no 'mens rea' or intention was on the part of accused—Conclusion of the Trial Court regarding non-availability of "mens rea" or lack of intention to commit the murder of deceased persons having no basis and foundation, was rejected in circumstances—No reasons existed which could justify a sympathetic, a lenient or concessional treatments for accused—In absence of any mitigating and extenuating circumstances justifying the imposition of lesser punishment,* ***sentence of life imprisonment awarded to accused was converted to that of death sentence, [p. 43] C***

***Zahid Imran and others v. The State PLD 2006 SC 109 Manzoor Ahmed v. The State 1999 SCMR 132; Muhammad Tahir Aziz v. The State 2010 PCr.LJ 1787; Nabi Bakhsh v. The State and another, 1999 SCMR 1972; 1998 SCMR 862; PLD 1976 SC 452; Muhammal Aslam v. The State PLD 2006 SC 465 and PLD 2006 SC 354 rel***

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# 2012 P Cr. L J 109

***[Balochistan]***

*Before Muhammad Noor Meskanzai and Naeem Akhtar Afghan, J J*

**JANGI KHAN** and another—Appellants *versus* *THE STATE—Respondent*

*Criminal Appeal No. 288 of 2007, decided on 18th July, 2011.*

***(a) Control of Narcotic Substances Act (XXV of 1997)— (Recovery from the secret cavities of the bus)***

*—Ss. 6 & 9(c)—Qanun-e-Shahadat (10 of1984), Art. 40—Possessing and smuggling of narcotics—Appreciation of evidence—Both accused persons, who respectively were driver and conductor of the bus wherefrom narcotic was recovered, disclosed information regarding secret cavities of the bus where the same was concealed—Such disclosure followed by the recovery, could be used against accused persons within the meaning of Art. 40, Qanun-e-Shahadat, 1984— Recovery from the secret cavities of the bus was effected at the pointation of both accused persons—No evidence was offered on the part of accused persons to indicate that they had no nexus with the bus—Accused did not even bother to enter in the witness box to confirm or substantiate their version that they had no nexus and concern with the bus—In view of overwhelming evidence mf prosecution, it was not only difficult, but impossible to believe that accused had no knowledge of contraband items—Non-production of bus before the court was not fatal to the prosecution case as accused had admitted their presence in the bus as well as recovery of contraband from the bus—Case against accused*

*persons, in circumstances, had fully proved and they were rightly convicted and sentenced, in circumstances, [pp. 115, 116, 117] A, B, C & D* ***MLD 2009 Pesh. 122; MLD 2000 Quetta 618; YLR 2009 Kar 1724; 2009 SCMR 431; 2002 PCr.LJ 1086 and Appeal No. 226 of 2006 titled as Hafeezullah and another v. The State ref.***

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# 2012 Y L R 168

***[Balochistan]***

*Before Muhammad Noor Meskanzai and Naem Akhtar Afghan,JJ*

**NOORU LL AH**—*Appellant versus THE STATE—Respondent*

***Criminal Appeal No.402 of 2009, decided on 29th September, 2011.***

(a) ***Penal Code (XLV of I860)***—*—S. 302(b)—Qatl-e-amd—Appreciation of evidence— No reasons existed, in circumstances, to disbelieve the ocular account furnished by the complainant and prosecution witness, corroborated by medical evidence and the recoveries— Recovery memo pertaining to blood stained cotton and the positive report of Forensic Science Laboratory had fully corroborated the statement of the complainant—No delay in lodging of the F.I.R.—Vehicle in question having not been identified by the witnesses, recovery of said vehicle was immaterial and would neither help the prosecution nor the defence—Prosecution evidence having remained firm, consistent and corroborative to each other on all the material points i.e. timing, manner of commission of offence, identification of accused being armed with specific weapons, the Trial Court, in circumstances, had rightly rendered the findings, which were, not open to any exception—Mere non-recovery of crime weapon, could not be treated a circumstances to vitiate the prosecution case—One of the witnesses, who could not be traced, was dropped—Prosecution produced two eye-witnesses and remained satisfied with the number of witnesses— Prosecution had the prerogative to produce whatever number of witnesses which it felt were necessary to prove the case— Testimony of two prosecution witnesses were treated as sufficient by the prosecution and the Trial Court having rightly believed the witnesses****, non-production of said witness (in subsequent trial against other accused P..170) was not fatal****— Trial Court having rightly rendered findings, appeal against judgment of the Trial Court was dismissed, [pp. 172, 173, 174]A, B, C & E*

***1985 SCMR 181; 2003 SCMR 477 and 1993 P Cr.L J 1231 distinguished.***

**(b)** ***Criminal trial****—Witness—****Subsequent hostility of witness****—Hostility of a witness, would not affect the veracity of said witness recorded earlier, provided same was corroborated by other material available on record. ]p. 174] D*

# 2012 M L D 262

***[Federal Shariat Court]***

*Before Shahzado Shaikh and Rizwan All Dodani, J J*

**AKHTAR HUSSAIN**—*Appellant versus THE STATE and another—Respondents*

*Criminal Appeal No.20/L of 2010, decided on 29th July, 2011.*

***Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)— (Zina With Consent)***

*—Ss. 10 & 11—Zina and abduction—Appreciation of evidence— Sentence, reduction in—Accused though was not nominated in the F.I.R., but victim in her statement under S.164, Cr.P.C. made specific allegation of abduction and zina-bil-jabr against the accused—Lady Doctor who examined the victim had observed that the victim was subjected to sexual*

*intercourse—Report of Chemical Examiner was also positive as the swabs were found stained with semen, which had corroborated the opinion of lady-doctor regarding sexual intercourse with the victim—Solitary statement of victim was sufficient to prove the allegation against accused—Such an intercourse in the absence of valid Nikah, would amount to zina, which needed to be analyzed as to whether it was zina-bil-jabr or not—Medico-legal report of the victim did not show any mark of violence on her body parts, particularly those which could provide evidence of violence or use of force by accused; or resistance offered in that regard by the victim, to indicate forcible act of zina—**Zina with consent** could be alleged from said facts and circumstances of the case—Offence under Ss.ll and 10(4) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979, thus could not be proved—Conviction of accused under S.10(3) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 **was converted to S.10(2) of the Ordinance and his sentence was reduced from fourteen years to ten years'** rigorous imprisonment, in circumstances.* ***[pp. 267, 268, 269] A, B, C, D, E & F***

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# PLJ 2012 FSC 66

***[Appellate Jurisdiction]***

*Present: Agha Rafiq Ahmed Khan**, C.J.***

**MUJAHID HUSSAIN-**Appellant versus STATE-Respondent

Crl. Appeal No. 47/1 of 2010, decided on 6.5.2011.

***Offence of Zina (Enforcement of Hudood) Ordinance, 1979 ( of 1979)— (377 PPC—Proved)***

*-S. 12-Pakistan Penal Code, (XLV of 1860), S. 377-Conviction and sentence-Challenge to-Offence of sodomy-Child of eight year…. Relationship of witnesses with the victim cannot be ground disbelieving eight years, minor, when his evidence is corroborated by the doctor who examined him—From the evidence on record, it fully proved that the present appellant and none else had committed sodomy upon victim, therefore, he has committed an offence punishable u/S. 377 of the Pakistan Penal Code-Allegation of kidnapping of victim by appellant/accused was concerned it had been alleged that victim was passing near the house of appellant, when he took him to baithak on the pretext of listening 'Deck'-Provision of S. 12 of ordinance was not attracted because taking victim from adjacent street to- the baithak by appellant would not constitute offence of kidnapping as contemplated by S. 12 of ordinance-Conviction and sentence set aside and appellant acquitted, but his conviction u/S. 377 was maintained-Sentence reduced conviction maintained-Order accordingly.* ***[Pp. 71 & 72] A, B &***

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# PLJ 2012 FSC 72

***[Appellate Jurisdiction]***

*Present: Shahzado Shaikh**,* **ACJ** *and Rizwan Ali Dodani**,* **J.**

**MAZHAR**-*Appellant Versus STATE-Respondent*

*Crl. Appeal No. 15/L and Jail Crl. A. No. 8/1 of 2009, decided on 27.9.2011.*

***Solitary Statement**—Proposition-In such cases solitary statement of the victim is sufficient to prove the prosecution case.*

*—'**Mitigating' means** making something less harmful, unpleasant or bad; that there may be mitigating circumstances/factors which might help explain appalling behavior or criminal activity of the offender. [P. 82]D (Advanced Learner's Dictionary)*

***Mitigating circumstance***—*Mitigating circumstance is a fact or situation that does not justify or excuse a wrongful act or offense but that reduces the degree of culpability and thus may reduce the punishment (in a criminal case)- A fact or situation that does not bear on the question of a defendant's guilt but that is considered by the Court in imposing punishment and especially in lessening the severity of a sentence. (Black's Law Dictionary)*

***First Offender—****Term 'first offender' has also to be seen carefully in relation not only to severity and momentary course of crime, but also with reference to proportions of its lasting effects-Condonation of heinous crime of rape with a minor girl, as a first offence, has very serious repercussions not only for the victim for her family, but more so for society and even more implications for moral ethos sustaining a legal system, claiming scriptural stamp also.* [P. 82] *F*

***Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979)--***

-S. *10(3)-Conviction and sentence-Challenge to-Offence of* Zina—lt *was an occurrence of shocking nature, with a little girl of 9/10 years, who was subjected to such brutality that she remained in precarious condition and was admitted in hospital for many days i.e. about nine days where her operation was conducted in order to stitch tears on her private parts, under general anesthesia-No mitigating circumstance emerges on the record to reduce sentence of the appellant-Any way since a plea of 'first offender' and 'young man' who has been awarded sentence of 'life imprisonment' for* Zina-bil-Jabr, *has been raised as 'mitigating circumstance' may need consideration as these terms are sometimes applied as misnomers, away from their precise legal inference and implication-No doubt it is highly deplorable that a 'young man' will have to undergo a sentence for life--Although incomparable, precisely, the poor minor victim girl will continue to bear ignominy and scar of* Zina-bil-Jabr, *for life, for herself and for family for generations, with little possibility in our society to be accepted in respectable* marital life. *Sufferings of the female victim may be more agonizing than those of the male delinquent desperado-Prosecution had fully proved its case beyond any shadow of doubt-Court had rightly convicted and sentenced appellant-Appeal dismissed and conviction and sentence was maintained.[Pp. 81, 82 & 83] B, C, G & H*

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# PLJ 2012 Cr.C. (Lahore) 185 (DB)

Present: *Ijaz Ahmed Chaudhry, C.J. and Mazhar Iqbal Sidhu,, J.*

**ZAFAR IQBAL**-*Appellant versus STATE-Respondent*

*Crl. Appeal No. 1883 of 2006 and* ***M****.R. No. 791 of 2006, heard on 3.8.2011.*

***Pakistan Penal Code, 1860 (XLV of 1860)-***

*302(b)~Conviction and sentence… challenge to… 24 hours delay in lodging FIR-Evidence of recovery synchronized the prosecution case-previous enmity-Appellant had not come-with true version of occurrence-Question of-Quantum of sentence of case was harsh and not condign-Apparently mala fide on part of complainant exists that for a* ***single shot he had involved three real brothers****-Deceased was not party to said incident-Motive allegedly mentioned in F1R directly cannot be attributed to appellant-So far as incident of causing injuries, brick batting as well as expletive language was used by both parties and had not been manifested as to why matter reached up to making of fire shot injuries to deceased-Legitimately come after assessing entire material available on record that both parties have concealed their roles played by them in commission of crime-****Report of ballistic experts shows allegedly empty was fired from barrel gun of appellant****-Prosecution had fully proved its case against appellant beyond any shadows of doubt-Appeal was dismissed. [Pp. 191 & 192] A, B, C, D, E, F & G*

***Criminal Procedure Code, 1898 (V of 1898)--***

—S. 376-***Legitimately the quantum of sentence*** *of case was harsh and was not condign-Death sentence of appellant was commuted* ***to imprisonment for life*** *u/S. 376 Cr.P.C.-Appeal was dismissed.*

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# 2012 Cr.LJ 180

*(Criminal Law Judgment)****(Sukkur)***

***B****efore Muhammad Ali Mazhar, J.*

*Constitutional Petition No. S-224 of 2011 accepted on 18.8.2011*

**ZAHID ALI**—*Petitioner* versus *STATION HOUSE OFFICER, ETC.—Respondents* ***(Second FIR, Not barred)***

***(a) Criminal Procedure Code (V of 1898)--*** *Ss. 22A, 22B. It is not function of Justice of Peace to touch merits of the case. His role is only confined to see whether police on approach of an aggrieved party has or has not recorded his statement about commission of cognizable offence. Order of Justice of Peace dismissing application for registration of case by touching merits of the case set aside by High Court by accepting writ petition against it with direction to SHO to register FIR if a cognizable offence is made out from statement of complainant. (P. 188, 190)*

***(b) First Information Report (FIR)—****There is no hard and fast rule that second FIR could not be registered in respect of different version of same occurrence given by an aggrieved party. (P. 189)*

***(2001 SCMR 1556 Wajid Ali Khan Durrani VS Govt. of Sindh, PLD 2005 SC 297 Mst Anwar Begum VS Station house Officer, 2011 YLR 866, Muhammad Nawaz VS DPO & Others, 2011 P Cr. L J 268, Mumtaz Ali VS SHO) Rel.***

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# 2012 Cr.LJ 190 / 2012 P Cr.LJ 690

(*Criminal Law Judgments)* (***Karachi***)

*Before Muhammad Ali Mazhar, J.*

*Crl. B.A. No. 574 of 2011 dismissed on 16.9.2011.*

**KADIR BUX @ PORHO** *–Applicant versus THE STATE—Respondent*

***Criminal Procedure Code (V of 1898)— [Common Intention/ Bail Refused]***

*S. 497(1).* ***Presence of accused at place of incident duly armed with weapons would show his pre-concert in furtherance of common*** *object which would make him constructively liable for murder. His bail application dismissed as there were reasonable grounds of his guilt. (P. 196,197,198)*

***(b) Ibid—*** *S. 497(2). Mere possibility of further inquiry which exists in every criminal case would be no ground for bail. (P. 197)*

***(c) Ibid—*** *Ss. 497/498. Deep appreciation of evidence at bail stage is not permissible but there is no bar to tentative assessment of evidence at bail stage. (P. 197,198)*

***(d) First Information Report (FIR)--****Delay in lodging FIR of murder case would not be fatal to prosecution when dead-body of deceased was recovered next day after search. (P. 195)*

**(e)** ***Penal Code (XLV of I860)—*** *Ss. 34/148/149. Question of vicarious liability can be looked into even at bail stage when according to FIR accused had acted in pre-concert. (P. 196***) ***PLD 2001 SC 378, 2011 MLD 1171 Rel***

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# PLJ 2012 Cr.C. (Karachi) 193

***[Sakkar Bench]***

*Muhammad Ali Mazhar, J.*

**NAZIR AHMAD**- *Applicant* versus *STATE-Respondent*

Crl. Bail *Application.* No. S. 334 of 2011, decided on 26.8.2011. ***(Co-Accused Already Granted Bail, Two years in detention, Accused found sitting on the cot of deceased, Bail Refused)***

***Criminal Procedure Code,*** *1898* ***(V of*** *1898)–*

*—S. 497--Pakistan Penal Code, (XLV of 1860), S. 302»Bail, dismissal of- -Specific role attributed-Named in FIR-Medical certificate fully support the version of complainant and the cause of death was asphyxia as a result of strangulation-Held: No reasonable grounds to believe that applicant had been falsely implicated in the case- Almost in every criminal case is no ground for treating the matter as one under sub-Section 2 of Section 497 Cr.P.C.-Further held: Case of further inquiry would only be made out when data collected by prosecution is not sufficient to provide reasonable ground for believing that a case exists against accused-Bail dismissed. [Pp. 197 & 198] A & B*

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# PLJ 2012 Cr.C. (Lahore) 215

**Present:** *Mazhar Iqbal Sidhu, J*

**MUHAMMAD SHEHBAZ-***Petitioner versus STATE and another-Respondents*

*Crl. M. No. 12570-B of 2011, decided on 20.10.2011.*

***Criminal Procedure Code, 1898 (V of 1898)-- (Rape with little girl during school hours, Bail Refused)***

*-S. 497-Pakistan Penal Code, (XLV of 1860), S. 376-Bail, dismissal of- Rape with minor girl-Incident took place during recess time-Admit one index finger easily-Blood oozing-Vaginal tears were stitched- Report was positive-Victim was subjected to rape and defloration also occurred-Petitioner had committed hideous offence and found guilty-Report-of DNA test was inconsequential and indusive because petitioner was lonely person who committed rape, Victim had made statement against petitioner-No case was made out for grant of bail- Bail dismissed.[Pp. 216 & 217] A & B*

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# PLJ 2012 Cr.C. (Peshawar) 204 (DB)

***[Mingora Bench]***

*Present: Fazal-i-Haq abbasi &* **(Sic),** *JJ.*

**HABIB KHAN *etc.*-***Petitioners versus DOST MUHAMMAD KHAN-Respondent*

***Crl. A. No.*** 649 ***of*** 2009, ***decided on*** 20.10.2011.

***Witness- Interested or related witness-****No universal rule can be laid down that in no case an interested or related witness can be relied upon-Interested witness is one, who has reason to falsely implicate an accused in commission of an offence-Related witness sometime particularly in murder cases may be found more reliable because he would not substitute an innocent person by letting off the actual culprit-Evidence of interested witnesses cannot be discarded unless found unreliable and untrustworthy-However, not as a rule of law but as a rule of prudence, sometime corroboration is sought. [P. 209] A*

***Witness-*** *It is quite settled that* ***obliging concessions made by recovery witness are of no consequence*** *because investigating officer is as good witness as anybody else.[P. 209] B PLD 1980 SC 317 (c), 2001 SCMR 1919, ref.*

***Witness****-It is well settled that fact deposed by a witness, in examination-in- chief, if not cross-examined would be deemed to have been admitted by the defence. [P. 209] C 2000 P Cr.L J 216 & 2007 SCMR 518, ref.*

***Absence of motive-*** *Weakness or absence of motive or failure to prove the same cannot adversely affect the prosecution case, if it is otherwise proved beyond reasonable doubt. [P. 210]*

***Pakistan Penal Code, 1860 (XLV of I860)--*** **S.** *34~Common intention-When a criminal act is done by several persons in furtherance of common intention, then each of them is liable as if it was done by him alone. [P. 210] F*

***Pakistan Penal Code, 1860 (XLV of 1860)*- S**. *302(b) & 34-Conviction and sentence-Challenge to-Common intention-Question of fact-Ascertained from evidence-**Co-accused was attributed the role of catching hold of deceased**, when accused fired at his head-This showed the common intention and facilitation of the murder of deceased-Apprehension of accused along with crime weapon and of co-accused soon after the occurrence from the spot, corroborated by medical evidence, recoveries from the spot, motive and positive reports of the serologist and Fire Arm Expert-Trial Court had appraised the evidence on record thoroughly, properly and fairly-Principles of safe administration of the criminal justice, judgment was based on sound reasoning-Appeal was dismissed. [Pp. 210& 211] G.H.I& J*

***Criminal Procedure Code, 1898 (V of 1898)*-- S**. ***174 r/w Chapter XXV Rule 35 of Police Rules-Mentioning the FIR number-Names of the accused or eye-witnesses or presence of empty shall in the inquest report is not a requirement of law.*** *[P. 210] D 1968 SCMR 1240, PLD 1977 SC 4, PLD 1978 SC 171 & . 2001 SCMR 241, ref.*

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# PLJ 2012 Lahore 197

***[Multan Bench Multan]***

***Present: Rauf Ahmad Sheikh, J.***

**MUHAMMAD WAQAR**-*Petitioner versus JUSTICE OF PEACE, MULTAN and 4 others-Respondents W.P. No. 11086 of 2011, decided on 13.9.2011. Constitution of Pakistan, 1973-* ***(FIR Refused)***

***Art. 199-Criminal Procedure Code, (V of 1898), Ss. 22-A, 22-B, 154 & 195(l)(c)***~*Constitutional petition-Vested with power to issue direction for registration of the case-Commission of cognizable offence-No specific incident qua making of trespass, causing of torture, mischief or theft was given—No specific date or time of occurrence was mentioned-Contention-Validity-Alleged offence was committed in relation to proceedings of the Court so order for issuance of direction to register; the case could had been passed as u/S. 195(l)(c), Cr.P.C.-Cognizance of such offence could be taken only on complaint of the Court-There was dispute regarding possession of house-Possibility of submission of petition to put pressure on respondents-Petitioner had efficacious remedy in form of private complaint qua alleged commission of offence of trespass theft and could move application before the Court-Petition dismissed. [P. 199]*

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# PLJ 2012 Lahore 209

***Present*: *Mehmood Maqbool Bajwa, J.***

**SHAUKAT ALI** *etc-Petitioners versus STATE etc.-Respondents W.P. No. 2495 of 2010, decided on* **21.10.2011.** *Constitution of Pakistan, 1973 –* ***(Quashing of FIR Refused)***

***Art. 199-Pakistan Penal Code, (XLV of 1860), S. 406-Financial Institution (Recovery of Finances) Ordinance, 2001, S. 7(4)-Quashing of FIR****-Mis-appropriation of hypothecated stock-Jurisdiction of Banking Court-Question of-Whether respondents were competent to set in motion ordinary law by getting a case registered u/S. 406 of PPC or exclusive remedy available was to file complaint-Factual premises-Validity-While availing loan facility they not only mortgaged their assets and properties but also hypothecated different type of stock allegedly mis-appropriated by petitioner which allegation had been controverted-Since factual controversy was required to be settled in order to grant relief sought by petitioners-High Court was neither competent nor authorized to settle disputed question of fact and that too on bald allegations. FIR can be quashed if very registration of case was proved to be malafide on record but mere allegation of*

*malice did not confer jurisdiction to grant such relief-Question of jurisdictional defect could not be established-**Petition was dismissed**. [P. 213]*

***Ref. 2011 P Cr. L J 1763, 1991 P Cr. L J 963, 2009 P Cr. L J 325, 2009 CLD 1422, 1149, 2010 SCMR 624,***

***Rel 2006 SCMR 483, 2006 SCMR 1957, 2006 SCMR 1192, 2010 CLD 639, 2002 YLR 3847, 2006 SCMR 276***

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# PLJ 2012 LAHORE 216

***[Rawalpindi Bench Rawalpindi]***

**Present:** *Malik Shahzad Ahmad Khan, J.*

**ALAM DIN** *Petitioner versus MUHAMMAD HUSSAIN and 2 others* C.R. No. 536 of 2009, decided on 16.11.2011.

***Malicious Prosecution-- (Benefit of Doubt, Acquittal, No Malicious prosecution)***

*Suit for recovery of damages for malicious prosecution-Acquittal from criminal proceedings-Accused could not be declared to be malicious merely because he was acquitted-Suit was dismissed by Courts below-Challenge to-Validity-Mere fact that prosecution instituted by defendant against plaintiff ultimately had failed, could not expose former to charge of malicious prosecution unless it was proved by plaintiff that prosecution was instituted without any justifiable reason and it was due to malicious intention of defendant and not with a mere intention of carrying law into effect-Acquittal on extension of benefit of doubt did not mean that accused were falsely implicated and possibility would not be excluded that accused might had been involved in the matter-Application u/Ss. 249-A **&** 561-A, Cr.P.C. for acquittal was dismissed by Courts below, there it could not be declared that defendants had acted without reasonable or probable cause-Basic ingredients to establish and prove a case for recovery of an amount as damages for malicious-prosecution were not established in the instant case and in absence of the ingredients, suit could not decreed-Petition was dismissed. [Pp. 220, 221 & 223] A, B & **1999 SCMR 734, PLD 1994 SC 476; 1999 SCMR 700; PLD 1992 sc24 (1990 SCMR 1277; 1991 SCMR 2220 & 1995 CLC 1134,** ref.*

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# PLJ 2012 Cr.C. (Lahore) 266

***[Multan Bench Multan]***

**Present**: ***Kh. Imtiaz Ahmad, J.***

**MAZHAR AHMAD**-***Petitioner versus STATE etc.-Respondent***

***Crl. Appeal No. 264 and Crl. Misc. No. 1 of 2011, decided on 23.11.2011.***

***Pakistan Penal Code, 1860 (XLV of 1860)-- (Fugitive after conviction, Bail Refused)***

*—-Ss. 161 & 420-Prevention of Corruption Act, 1947-S. 5(2) 47- Conviction and sentence-Absconder looses rights-Convicted did not surrender before High Court-Remained absconder for more than one month-Validity--Accused remained absconder after pronouncement of judgment for more than one month and did not surrender before any competent authority for such a long time- Fugitive from looses some rights-Petition had no force and stands dismissed.[P. 268] A & B **2002 PCr.LJ 1006, NLR 1999 Criminal 279 & 2010 PCr.LJ 1426,** rel.*

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# 2012 P.Cr.R. 324 / 2012 P Cr. L J 1048

***[Lahore]***

Present: ***MEHMOOD MAQBOOL BAJWA, J.***

**Tanveer Abbas** Versus *The State and others*

*Crl. Revision No. 648 of 2011, decided on 12th January,! 2012.*

*CONCLUSION*

***(1) Claim of minority agitated by the accused is required to be dealt with in accordance with mandate of S. 7, Juvenile Justice System Ordinance, 2000 to hold a proper inquiry.***

***(a) Juvenile Justice System Ordinance (XXII of 2000)—***

***~S.7—Claim of minority of accused—Determination! Criteria (Para 4)1***

***(b) Criminal Procedure Code (V of 1898)—***

*—S. 439—Pakistan Penal Code, 1860, Ss. 302/109/148/34 -Juvenile Justice System Ordinance, 2000, Ss. 2(b), 7, Criminal trial—Claim of minority of accused—Status—Birth certificate—Contention was that while determining status, of petitioner as child Trial Court ignored entry in birth certificate and concluded that outlook/physique of petitioner suggested him as major—Impugned order—Validity—Birth certificate was placed on record before Trial Court, therefore, proper inquiry was mandatory—Trial Court while dealing with matter disposed of same in cursory manner which was against intention of legislature—Claim of minority agitated at instance of petitioner was required to be dealt with in accordance with mandate of S. 7 of the Ordinance—Failure to adopt procedure to reach a just conclusion was an illegality which could not be endorsed—Impugned order was set aside—Trial Court was directed to decide application of petitioner claiming status of child accordingly—Criminal revision petition allowed. (Paras 5,6)* ***Ref. PLD 2009 SC 777.***

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# 2012 P.Cr.R.329

***[Multan]***

**Present:** *RAUF AHMAD SHEIKH and SYED IFTIKHAR HUSSAIN SHAH; JJ.*

**Muhammad Yaseen** Versus ***The State and others***

*Crl. Appeal No. 364 of 2007 and Murder Reference No. 53 of 2008, decided on 30th June, 2011.*

***(1) Mere relationship between the witnesses and the deceased was not enough to discard their evidence.***

***CRIMINAL TRIAL (MURDER)—(Appreciation of evidence)***

**(a)** ***Criminal Procedure Code (V of 1898—***

*—S. 410—Pakistan Penal Code, 1860, S. 302(b)—Murder trial—Impugned conviction/sentence of death—Appreciation of evidence—Validity—It was a daylight occurrence—F.I.R. was promptly lodged—PWs had attributed specific role of firing to appellant, who was armed with fire-arm at time of occurrence—Inspite of lengthy cross-examination of eye-witnesses/PWs, nothing beneficial could be elicited rendering any help to Appellant—Recovery of weapons of offence and report of ballistic expert being positive also fortified prosecution version—Motive stood established— Prosecution had established guilt of, appellant beyond shadow of doubt by producing worthy of credence and confidence inspiring evidence—Criminal appeal dismissed. (Paras 23,25,26)* ***Ref. 1982 SCMR 531 and NLR 1997 Criminal 49.***

*(b)* ***Appreciation of evidence*****---**

*—Corroboration—Rule—Held: Only for the safe administration of justice corroboration is necessary in the given circumstances but the scope of the principle cannot be extended to the case of ancillary facts testified by the witnesses.(Para 18)*

*(c)* ***Chance witnesses—***

*—Appreciation of evidence—Rule—If a chance witness reasonably explains his presence at the spot and his narration of occurrence inspires confidence then he is not a chance witness and his testimony can be considered along other evidence. (Para 16)* ***Ref. 2010SCMR 1791.***

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# 2012 P.Cr.R. 376

***[Lahore]***

*Present: MUHAMMAD ANWAARUL HAQ, J.*

**Khizar Hayat** ***Versus*** *The State and 2 others*

*Crl. Revision No. 209 of 2011, decided on 17th March, 2011.*

***(1) Section 7 of the Juvenile Justice System Ordinance, 2000 requires a Court to hold inquiry that includes a medical report to ascertain the age of the accused if any question arises regarding the same.***

## AGE OF ACCUSED—(Medical report)

***Criminal Procedure Code (V of 1898)—***

*—S. 439—Juvenile Justice System Ordinance, 2000, S. 7— Criminal trial—Question of determination of age of accused--Specific procedure—A Court is required to hold inquiry that includes a medical report to ascertain age of accused if any question arises regarding the same—Held: Impugned order as based upon personal .assessment of the Presiding officer of the Court and that too just on basis of physical appearance of petitioner regarding his age—Impugned order as set aside/Case remanded.* ***(Para 5) Ref.PLD 2004 SC 758.***

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# 2012 P.Cr.R. 390

***[Lahore]***

**Present:** *CH. IFTIKHAR HUSSAIN, J.*

**Sakhawat *alias* Safdar *alias* Chabboo** ***Versus The State and another***

***Crl. Misc. No. 2181/B of 2011, decided on 7th April, 2011.***

## BAIL (MURDER)—(Opinion of police)

***In the offence of abduction/murder, petitioner was found to have abetted offence during investigation. Opinion of I.O. is not binding on Court. Bail was refused.***

***Criminal Procedure Code (V of 1898)—***

*…S. 497—Pakistan Penal Code, 1860, Ss. 364/302/201— Allegedly abductee was learnt to have been murdered and his dead-body was disposed of—Bail plea—Opinion of police—It was reported during investigation that petitioner abetted his co-accused in commission of alleged offence-Held: Opinion of police, if any, is not binding upon Court-Petitioner was named in F.I.R.—Alleged offence did fell within prohibitory clause—Bail after arrest refused. (Paras 3, 4, 5)*

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# 2012 P.Cr.R. 393

***[Lahore]***

***Present:*** *RAUF AHMAD SHEIKH, J.*

**Mst. Kaneez Fatima** *Versus Station House Officer, P.S. South Cantt., Lahore and 5 others*

*Writ Petition No. 7085 of. 2011, decided on 22nd November, 2011.*

***QUASHING OF F.I.R.—(Runaway marriage)***

***Constitution of Pakistan (1973)—***

*—Art. 199—Pakistan Penal Code, 1860, S. 496-A— Runaway marriage—Seeking quashment of impugned F.I:R.—Consent statement in High Court—Alleged abductee rejected allegation of her abduction and stated that she contracted marriage with named person with her free consent and that she was a mother of an infant leading a happy married life—Held: Commission of alleged offence was not made out—Impugned F.I.R. quashed.*

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# 2012 P.Cr.R. 408

***[Bahawalpur]***

***Present: ABDUL SATTAR ASGHAR, J.***

**Muhammad Nawaz** *and* **2** *others Versus Muhammad Fazal and* **5** *others*

Crl. Misc. No. 1025-Q/BWP of 2009, decided on 28th September, 2011.

***INITIATION OF PROCEEDINGS U/S.* 145*, Cr.P.C.— (Inquiry into possession)***

***Criminal Procedure Code (V of*** 1898)—

*—S. 561-A—Dispute with regard to possession of agricultural land—SHO concerned sought an order to initiate proceedings u/s. 145, Cr.P.C—Judicial Magistrate passed an order that dispute was likely to cause breach of peace and thus ordered to attach and seal disputed property in terms of S. 145, Cr.P.C—Said order was set aside by revisional Court below—Validity—It was incumbent upon Magistrate to satisfy himself with regard to possession upon disputed land—Neither SHO furnished sufficient material with report nor Trial Magistrate bothered to provide an opportunity of hearing to parties before passing such order---Special Judicial Magistrate also failed to hold an inquiry into possession of parties are required u/S. 145(4), Cr.P.C— Impugned order did not call for any interference by High Court—Criminal Misc. application dismissed.*

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# 2012 P.Cr.R. 454

***[Rawalpindi]***

***Present:*** *SAYYED MAZAHAR ALI AKBAR NAQVI, J.*

**Muhammad Yar** *Versus The Additional District Judge, Pind Dadan Khan, District Jhelum and* **3** *others*

***Writ Petition No. 2805 of 2011, decided on 15th November, 2011. ,***

*CONCLUSION*

***(1) At the time of issuance of process the Court has to take into consideration only the fact that a 'prima facie case' is made out, which means that there are sufficient grounds for proceeding and it is not the same thing as "proof.***

***COMPLAINT CASE—(Summoning order)***

***Constitution of Pakistan,*** *1973—*

*—Art. 199—Criminal Procedure Code, 1898, Ss. 200, 204— Pakistan Penal Code, 1860, Ss. 379/411/427/440/148/149— Private complaint—"Prima facie case"—Trial Court directed summon accused person and criminal revision was dismissed there against—Constitution petition in High Court against impugned order—It was contended that civil matter had been given colour of criminal liability—Validity—At time of issuance of process the Court has to take into consideration only the fact that a "prima facie" case was made out, which means that there are sufficient grounds for proceeding and it is not the same thing as "proof- Moreover the Court was not expected to examine material minutely at stage of issuance of process and in-depth inquiry could only be held during course of trial/recording of evidence—Trial Magistrate in addition to recording cursory statement of compl*ainant/respondent also recorded *statements of other* PWs who in categorical terms *corroborated/supported stance advanced by complainant/respondent—Trial Magistrate after being satisfied that grievance of complainant was based upon good reason, issued process of summoning accused persons—Petitioner failed to point out any illegality/material irregularity in the impugned order/impugned judgment—Writ petition dismissed. (Para 6)*

*Ref.* ***AIR 1931 Cal. 607 and PLD 2007 SC 9.***

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# 2012 P.Cr.R. 466

***[Lahore]***

***Presenr. SYED IFTIKHAR HUSSAIN SHAH, J.***

**Muhammad Gulfam** *Versus R.P.O. and others*

*Writ Petition No. 9788 of 2011, decided on 25th October, 2011.*

***CONCLUSION***

***(1) Re-investigation of the case after the submission challan is not barred.***

***RE-INVESTIGATION— (Submission of challan)***

***(b) Constitution of Pakistan, 1973—***

*—Art. 199—Pakistan Penal Code, 1860, Ss. 302/324/148/149—Police Order, 2002, Art. 18(6)—Police Rules, 1934—Re-investigation of case—Impugned order—It was contended that after submission of challan in instant case, police was not competent to re-investigate the matter, Peculiar facts and circumstances—****Validity—Submission of even subsequent challan is not barred under provisions of Cr.P.C.*** *but it is entirely the discretion of Court to admit additional evidence collected during re-investigation being admissible or not—Re-investigation even after submission of challan could be conducted in peculiar facts and circumstances of each case—Mere submission of report u/S. 173, Cr.P.C, could not be made basis for stoppage of investigation—Writ petition dismissed. (Paras 7,8)*

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# 2012 P.Cr.R. 471

***[Lahore]***

***Present: SYED IFTIKHAR HUSSAIN SHAH, J.***

**Ali Quli Amin-ud-Din** *Versus Muhammad Zafar and others*

*Crl. Revision No. 1105 of 2010, decided on 12th October, 2011.*

***CONCLUSION***

***(1) The concept of recalling order passed in criminal jurisdiction is alien to the Criminal Procedure Code, 1898.***

### *(a) Criminal Court and review jurisdiction—*

*—A Court becomes functus officio after it passes and signs any order, no Court including High Court Can review its order passed in criminal jurisdiction. (Para 6)*

***Ref. 2001 P.Cr.LJ. 222 (Lah.), 1997 P.Cr.LJ. 741 (Kar.) and 1971 SCMR 618.***

***ORDER IN CRIMINAL JURISDICTION—(Review/recall)***

### *(b) Criminal Procedure Code (V of 1898)—*

*—Ss. 439, 369—Order in criminal jurisdiction—Power of review/recall—**ASJ directed registration of case against respondents for tempering of judicial record**—**Later on, said order was recalled by ASJ** on application made by said respondent after six months—Impugned order—Position in law—A Court becomes functus officio after it passes and signs any order, no Court including High Court can review its order passed in criminal jurisdiction—**Concept of recalling of judicial order is alien to Cr.P.C**—Impugned order was set aside by High Court—Criminal revision petition allowed. (Paras 6,7,8)*

***Ref**; 2001 P.Cr.LJ. 222 (Lah.), 1997 P.Cr.LJ. 741 (Kar.) and 1971 SCMR 618.*

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# 2012 MLD 732 / 2012 P.Cr.R. 475

***[Lahore]***

***Present. SYED MUHAMMAD KAZIM RAZA SHAMSI, J.***

**Shakeel Ahmad** *Versus The State and another*

*Criminal Miscellaneous No. 17587-B of 2011, decided on 19th January, 2012.*

***CONCLUSION***

*(1) The relief of anticipatory bail is an extraordinary relief which can be granted to a person, who comes to Court with clean hands.*

***(a) Bail— Contumacious conduct of accused—Held:** There is no bar for refusing bail to such like person whose conduct is contumacious and who is willing to play with the Court. (Para 5)*

***BAIL (MISAPPROPRIATION) ~ (Contumacious conduct of accused)***

***(b) Criminal Procedure Code (V of 1898)---***

*—S. **498—**Pakistan Penal Code, **1860,** S. **406—**Allegation regarding misappropriation of amount—Bail before arrest matter—Contumacious conduct of accused—Held**:** Petitioner had misused process of Court for his own advantage and posed himself to be on bail in a different F.I.R.—Relief of anticipatory bail is an extraordinary relief which cannot be granted to a person who comes to the Court with unclean hands—Assessment of record was sufficient to prove that petitioner had not approached either lower Court or High Court with clean hands—There was no bar for refusing bail to such like person, whose conduct was contumacious and who was willing to play with Courts—Bail . before arrest refused. (Paras 5,6)*

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# 2012 P Cr. L J 398

***[Peshawar]***

*Before Syed Sajjad Hassan Shah and Qaiser Rashid Khan, J J*

**AZMAT KHAN** *and another—Appellants versus THE STATE and 2 others—Respondents*

*Criminal Appeal No. 4 of 2010, decided on 19th October, 2011.*

***Penal Code (XLV of 1860)—*** *—-S. 302(b)—Criminal Procedure Code (V of 1898),* ***S. 540—****Qatl-e-amd Appreciation of evidence—Cross-version—Trial Court had not performed its duty as was required under the law—****When the record of the F.I.R. of cross-case was requisitioned at the specific request of the defence, then it was the bounden duty of the court to have examined witnesses about the said cross-version****—Prosecution had failed to perform its job in a befitting manner as sans the examination of the witnesses of the cross-version, the true and correct picture would not emerge, as had been done in the case, when the proceedings in the cross-version were shelved with a saintly indifference—Trial Court did not notice the explicit language of S.540, Cr.P.C, through which ample powers had been conferred on the court to summon any witness at any stage of the trial whose examination was essential for the just decision of the case—In order to meet the ends of justice, and more so for- doing substantial justice, remand of the case had become all the more essential; in view of the peculiar circumstances of the case where neglect and failure to perform duty had become the hallmark of the case, which had attracted attention of the court at the appellate stage- Impugned judgment of conviction and sentence awarded by the Trial Court was set aside and case was remanded for decision afresh after examining the essential witnesses in accordance with law, within three months, [p. 401] A*

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# 2012 P Cr. L J 420

***[Lahore]***

***Before Abdus Sattar Asghar, J***

**MUHAMMAD HUSSAIN***—Petitioner versus THE STATE and 2 others—Respondents*

*Criminal Appeal No. 257/2010/BWP, decided on 4th October, 2011.*

***(a) Penal Code (XLV of I860)—***

*—Ss. 467/468/471/409—Prevention of Corruption Act (II of 1947), S.5(2)~-Pakistan Criminal Law Amendment Act (XL of 1958), Ss.3 & 10(2)—Criminal Procedure Code (V of 1898), S. 417—Forgery, criminal misconduct—Appeal against acquittal—Maintainability,* ***Appeal had been filed under S.417, Cr.P.C. by a prosecution witness in his private capacity against the order of Special Judge, Anti Corruption, acquitting the accused—Section 417(1), Cr.P.C. did not furnish any right to a private person to lodge an appeal against order of acquittal passed by any court other than the High Court…*** *Appellant, in the present case, did not fall in the ambit of expression "aggrieved person" used in S.417(2-A), Cr.P.C—Prevention of Corruption Act, 1947, is a special law and is silent regarding right of appeal—Right of appeal being a statutory right could not be inferred by implication on the basis of general law, nor could be assumed unless given by the statute—Special Judge is appointed under S.3 of Pakistan Criminal Law Amendment Act, 1958, and S.10(2) of this Act regulates the filing of appeal against the order of Special Judge~ Appeal filed by a private person under S.*

*417, Cr.P.C. against the judgment of acquittal passed by the Special Judge, Anti Corruption, therefore was not maintainable and the same was dismissed in limine accordingly, [pp. 421, 422] A, B, C, D & E* ***Syed Masroor Shah and others v. The State PLD 2005 SC 173 and Mian Khalid Rauf v. Ch. Muhammad Saleem and others PLD 2006 Lah. 147 ref.***

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# 2012 P Cr. L J 402

***[Sindh]***

*Before Muhammad Tasnim, J*

**MUHAMMAD ISHAQUE**—*Applicant versus THE STATE/ANF PS HYDERABAD—Respondent*

***Criminal Bail Application No. S-421 of 2011, decided on 4th November, 2011.***

***(a) Criminal Procedure Code (V of 1898)—***

*—-Ss. 497 & 103—Control of Narcotic Substances Act (XXV of 1997), Ss.9(c), 25 & 51—Possessing and trafficking narcotics—Bail, refusal of—1100 grams of charas was recovered from one of co-accused, 500 grams each from other two co-accused, while two kilograms of charas was recovered from the accused—Case of co-accused being border line case, they were granted bail—Accused from whom two kilograms of charas was recovered, being not similarly placed, rule of consistency could not be applied to his case—Arrest of accused on the spot along with recovered charas, prima facie, suggested that he was involved with the commission of offence, for which the sentence prescribed under S.9(c) of Control of Narcotic Substances Act, 1997 was death or imprisonment for life—Accused, prima facie, was not entitled to bail— offence of accused not only fell under prohibitory clause of S.497, Cr.P.C., but also attracted the bar contained in S.51(l) of Control of Narcotics Substances Act, 1997—Objection of counsel for accused regarding non-compliance of S. 103, Cr.P.C. was misconceived as by virtue of S.25 of Control of Narcotic Substances Act, 1997, non-citing of a private witness was not fatal to the prosecution case as S.103, Cr.P.C . had been specifically excluded from its application, in case of narcotics—No material was available on record to suggest that accused was facing ailment, which could not be cured in the prison; or there was any danger to his life if such* ***medical*** *treatment was not provided to him outside the prison— Counsel for the accused had argued that accused being T.B patient he could be enlarged on bail—No definite finding could be recorded on such aspect of the case, at bail stage—Accused having failed to make out a case for grant of bail, his bail application was dismissed, in circumstances, [pp. 405, 406, 407, 408] A, C, E & F*

**Nasir Khan Afridi v. State 2011 YLR 2316; Maqsood Zaman v. State 2011 YLR 2335; Bahawal v. State 2011 PCr.LJ 1200; Mumtaz v. State PLD 2002 SC 590; Hamza v. State 2000 PCr.LJ 1360; Muhammad Aslam v. State 2011 SCMR 820; Khuda Bux v. State 2010 SCMR 1160; Safir Khan v. State 2011 MLD 365 and Shahid Hussain v State 2008 YLR 1560 distinguished.**

**The State v. Javed Khan 2010 SCMR 1989; Muhammad Khan v. 2008 SCMR 1616; Ghulam Qadir v. State PLD 2006 SC 61;** The state **VS Abdul Ghani 2010 SCMR 61 and Zulfiqar Ali v. State 2006 SCMR 800 ref.**

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# 2012 P Cr. L J 493

***[Peshawar]***

***Before Mian Fasih-ul-Mulk and Fazal-i-Haq Abbasi, J J***

**USMAN ALI**—*Appellant versus KHAISTA MUHAMMAD and others—Respondents*

*Jail Criminal Appeal No.335 and Murder Reference No. 11 of 2010, decided on 22nd November, 2011.*

***Penal Code (XLV of I860)— (Hostile Complainant, death confirmed)***

*—S. 302(b)—Qatl-e-amd—Appreciation of evidence—Complainant in his examination-in-chief, confirmed the version given by him in his report and made some obliging concessions in his cross-examination, but when he was declared hostile, he admitted the relationship in between him and the accused—Complainant also admitted presence of accused near the place of occurrence—Prosecution witnesses supported the prosecution version; recovery of blood-stained earth, shotgun having empty shell in its chamber from the spot and recovery of bloodstained shirt of the deceased—-Accused made a clean-breast confession on the following day of the occurrence—Accused for the first time retracted confession after about 2-1/2 years—No hard and fast rule could be laid down as to how much time for reflection should be given to accused before recording confessional statement, because it depended on the circumstances of the case—Absence or weakness of motive or failure to prove the same, could not be taken as mitigating circumstance— Confession of accused was corroborated by ocular/medical evidence, recovery from the spot and positive reports of Experts—Prosecution had proved its case against accused without any shadow of doubt—Judgment passed by the Trial Court based on proper appraisal of evidence, needed no interference—Death sentence awarded to accused, was confirmed and murder reference was answered in the positive, in circumstances, [pp. 495, 496, 497] A, B, C & D*

***1992 SCMR 196; 1993 SCMR 417; 1993 SCMR 1822; Bakhtawar Khan v. The State PLD 1995 SC 336; PLD 1996 SC 1 and 2010 SCMR 97 ref.***

***Muhammad Yaqub v. The State 1992 SCMR 1983 and Bakhtawar Khan v. The State PLD 1995 SC 336 rel.***

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# 2012 P Cr. L J 498

***[Lahore]***

***Before Sh. Ahmad Farooq, J***

**Pir ALLY IMMRAWAN SAHAR ESSAPHEL—***Petitioner versus JUDGE ANTI-TERRORISM COURT and others—Respondents*

*Writ Petition No. 15812 of 2011, decided on 26th January, 2012.*

***(a) Criminal Procedure Code (V of1898)— Delayed complaint can not be dismissed on the ground of limitation***

*—S. 200—Constitution of Pakistan, Art. 199—Penal Code (XLV of 1860), SS.337-F/506-B—Anti-Terrorism Act (XXVII of 1997), S. 7(c)— Constitutional petition—Ghayr-jaifah, criminal intimidation, acts of terrorism—Assault in court room—Private complaint—Limitation— Complaint of petitioner had been dismissed by the Trial Court mainly on ground of delay in filing complaint—Respondent had been unable to rebut the petitioner's contention that no limitation was provided in criminal law for filing complaint—Petitioner had been continuously-pursuing the case and in that respect he had also lodged an F.I.R. and on being disappointed from police officials he resorted to filing the private complaint—Petitioner had supported his complaint by recording his statement as witness, which was corroborated by the statement of other witness—Trial court was not justified in dismissing tag complaint—Constitutional petition was accepted and order of Trial court was set aside, [p. 500] A & C*

***Muhammad Fiaz Khan v. Ajmer Khan and another 2010 SCMR 105*** rel.

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# 2012 PCr. L J 517

***[Lahore]***

***Before Manzoor Ahmad Malik and Altaf Ibrahim Qureshi, J J***

**MUHAMMAD SHABBIR alias SHEROO** *and another—Appellants versus THE STATE and another—Respondents*
*Criminal Appeal No. 168-J of 2008 and Murder No. 11/2009/BWP of 2009, heard on 20th October, 2011.*

***(a) Penal Code (XLV of 1860)— (Motive not proved, sentence altered to life imprisonment)***

**—S.** *302(b)— Qatl-e-amd— Appreciation of evidence— Sentence, reduction in—F.I.R. was recorded with promptitude without any delay, which had ruled out the chances of consultation, deliberation or concoction of the story for false implication of accused as a single accused—Complainant who was father of the deceased, had fully supported the prosecution version narrated in the F.I.R.—Complainant though was closely related to the deceased being father, but mere close relationship of the witnesses inter se and with the deceased, was not sufficient to term them as interested witnesses—Defence failed to bring on record any enmity or mala fide on the part of the complainant for false implication of accused by letting off the real culprit—Even otherwise substitution of the real culprit was a rare phenomenon where the complainant was father of the deceased—It was a broad-daylight occurrence—According to the site plan, the place of occurrence located within the residential houses and the house of the complainant was also shown in the said lane—Time, place and the manner in which the occurrence took place led one to draw an inference that occurrence could not go unnoticed as the presence of the persons of the locality at the relevant time was quite natural and the deceased in injured condition was immediately shifted to hospital—Evidence of the complainant, was supported by medical evidence inspiring confidence and it had been rightly relied upon by the Trial Court for recording conviction against accused—Recovery of offensive weapon/Repeater . 12 bore gun, empties and blood-stained earth, had fully been proved—Prosecution, however, could not prove motive through evidence of unimpeachable character—Medical evidence produced by the prosecution had provided full support to ocular account—Defence had failed to bring on record any material to show that the occurrence had not taken place at the time given by the prosecution; and its time was changed to suit the prosecution for false . implication of accused—Prosecution had succeeded in bringing home guilt to accused for committing qatl-e-amd of deceased through evidence of unimpeachable character—Conviction of accused recorded by the Trial Court under S. 302(b), P.P.C., was maintained, m circumstances, but sentence of death was converted to imprisonment, [pp. 524, 525, 526, 527] A, B, D, E & F* ***The State* v. *Muhammad Yasin 1995 SCMR 635; MuhamnB Ayub and another* v. *The State 1983 PCr.LJ 710 and Arshad Mehmoa* v. The *State 2005 SCMR 1524 rel.***

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# 2012 PCr. L J 530

***[Faderal Shariat Court]***

***Before Shahzado Shaikh and Rizwan Ali Dodani, J J***

**MUHAMMAD ASLAM—***Appellant versus THE STATE and another—Respondents*

***Criminal Appeal No. 86-L of 2010, decided on 9th December, 2011.***

***(a) Offence of Zina (Enforcement of Hudood) Ordinance (VII of1979)— (Consent of Kidnapped, immaterial, intent of accused in kidnapping, immaterial, No proof of compromise, sentence maintained)***

*—S. 12—Penal Code (XLV of 1860), S.377—Kidnapping or abduction in order to subject person to unnatural lust—Sodomy—Appreciation of evidence—F.I.R. of daylight occurrence was lodged by the complainant promptly on the same day giving details of occurrence in which accused was nominated—Victim who was star witness in the case, was minor at the relevant time, but proved to be competent witness to record his statement, gave full details regarding the occurrence—Victim was cross-examined at length, but his veracity could not be shattered; his statement was fully corroborated by complainant—Solitary statement of the minor victim was sufficient to prove the allegation as same was consistent, corroborated and trustworthy and fully supported.by medical evidence—Report of Chemical Examiner was positive and doctor after observing report of Chemical Examiner, opined that act of sodomy was committed—Substantive piece of evidence i.e. medical evidence, report of Chemical Examiner, statement of victim himself which was supported by the complainant, were sufficient to connect accused with the crime, without any shadow of doubt—Accused could not produce any corroboration/evidence to prove his plea that he had falsely been involved in the case and that prosecution witnesses had deposed against him being related inter se—Counsel for accused could not produce any thing in writing regarding compromise allegedly arrived at between the parties; even otherwise offence was not compoundable—No mitigating circumstance could be pointed out which could warrant reduction of sentence of the accused—Trial Court had rightly convicted and sentenced accused, in circumstances, [pp. 537, 541] A & C*

***Abdul Wadood and an other v. The State 1986 SCMR 1947 distinguished.***

***Waqar-ul-Islam and another v. State 1997 PCr.LJ 1107 and 2006 SCMR 1609 rel***.

***(b) Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)—***

*—S. 12—Penal Code (XLV of 1860), Ss.359 & 362—'Kidnapping', and 'abduction'—Distinction—In kidnapping a minor person or person of unsound mind was removed from the lawful guardianship; and was simply taken away, or enticed to go away with the kidnapper—In abduction, force, compulsion or deceitful means were used—In kidnapping the consent of the kidnapped was immaterial, while in abduction consent would condone the offence—In kidnapping intent of accused was irrelevant, but in abduction, it was the all important question—Kidnapping was not a continuous offence, but in abduction whenever an abductee was removed from one place to another, it was an offence, [p. 539] B*

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# 2012 P Cr. L J 545

***[Peshawar]***

***Before Syed Sajjad Hassan Shah and Khalid Mehmood Khan, JJ***

**RAHAT KHAN alias RAIT KHAN**—***Appellant versus THE STATE and another—Respondents Criminal Appeal No.91 of 2009, decided on 8th September, 2011.***

**(a)** ***Penal Code (XLV of I860)—***

*—Ss. 302/324/34—Qatl-e-amd and attempt to commit qatl-e-amd— Appreciation of evidence—Occurrence having taken place in the daylight, misidentification of accused and that of co-accused was not possible—*

*Presence of complainant along with deceased at the time of occurrence, was natural—Nothing was to contradict the statement of complainant who was thoroughly examined by the defence—Report was promptly lodged in the hospital as soon as injured/deceased was brought there—Site plan was prepared on the next day because after lodging of the report it was late hours and due to darkness it was not prepared—Recovery of blood-stained earth and three empties also corroborated the version of prosecution regarding the place of occurrence—Presence of complainant had been proved by the recovery of blood-stained earth and three empties supported by medical evidence—Nothing was on record to show that the complainant due to some personal grudge and ulterior motive had charged accused for his personal gain or for any other enmity—Statement of complainant was straightforward, natural, convincing and confidence-inspiring— Motive, even if not proved is not fatal as lack of proof of motive would not adversely affect the prosecution case—Unexplained long absconsion of accused, was a strong corroboratory evidence in the case—Accused did not surrender voluntarily before the Police, but he was arrested during raid—Recovery of blood-stained earth, three empties from the spot coupled with medical evidence, had duly supported the version of prosecution story—Conviction awarded by the Trial Court on the basis of solitary evidence fully corroborated by other circumstantial evidence was maintained and appeal being without force, was dismissed, [pp. 548, 549, 550] A, B, C, D & E* ***2011 SCMR 85 rel.***

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# 2012 PCr. L J 550

***[Sindh]***

***Before Shahid Anwar Bajwa and Muhammad Ali Mazhar, J J***

**ALTAF HUSSAIN**—*Appellant versus THE STATE—Respondent*

*Criminal Jail Appeal No. D-117 and Confirmation Case No.D-6 of* **2008** *decided on 19th October, 2011.*

## *Penal Code (XLV of I860)— (Confession, Murder of Wife, sufficient for conviction)*

*—S. 302— Qatl-e-amd— Appreciation of evidence—reduction in—Submission* ***of counsel, who had volunteered to appear on behalf of accused, had contended that at the time of framing of charge no advocate was provided to accused, but was provided later on and evidence of prosecution witness was recorded on the very date when counsel appeared for the first time—Counsel for accused had not at all objected to recording of examination-in-chief on the day when he was appointed for the first time****; he had nowhere contended that accused had been in any way prejudiced in his defence by lack of representation through a counsel on the day when the charge was framed—No such miscarriage of justice having been pleaded by the counsel and was not discernable from the record and proceedings of the case, contention of counsel was without any substance—Contention of the counsel for accused was that, the complainant in his evidence had merely stated that hatchet blows were given to the deceased, but it was not stated that hatchet blows were given to her—Said contention had no force as while recording statement under S.342, Cr.P.C. question about recovery of blood-stained earth was put to accused—Contention that recovery of hatchet was not put to accused at the time of recording statement under S.342, Cr.P.C, was not correct and was not borne out from the record—Evidence of prosecution witnesses was found to be doubtful, contentions that there were contradictions in ocular and medical evidence, and that contradiction was also found in statement of*

*complainant/prosecution witness regarding blows given by all three persons therefore, need not be adverted to—**Accused had clearly and fairly stated that he had committed the offence of murder of his wife and had voluntarily recorded judicial confession that he had murdered his wife as he suspected her character—Said confessional statement alone was sufficient to convict accused**—Sole basis of conviction of accused was the confessional statement of accused and statement of accused under S.342, Cr.P.C. and direct evidence did not seem to deserve much reliance—Interest of justice would be served if while maintaining conviction of accused, his sentence of death was converted into imprisonment for life. [pp. 554, 555, 557, 558, 559] A, B,* **C , D &** *E*

***Abdul Sattar v. State 2002 PCr.LJ 51; Muhammad Shah v. State 2010 SCMR 1009; Riaz Ahmed v. State 2010 SCMR 846; Majeed v. State 2010 SCMR 55; Ghulam Qadir and others v. State 2007 SCMR 782; Mokha v. Zulfiqar and 9 others PLD 1978 SC 10; Allah Bakhsh v. Shamim and others PLD 1980 SC 225; Ahmed and others v. The State 1987 SCMR 2019; Nadeem alias Nanha alias Billa Sher v. The State 2010 SCMR 949 ref.***

***Mazhar Hussain v. State 1990 MLD 195; State v. Minhun alias Gul Hassan PLD 1964 SC 813; Ghulam Qadir and others v. The State 2007 SCMR 782; Adalat alias Muhammad Ali alias Iqbal and others v.The State and others 2000 MLD 875; Zulfiqar Ali v. The State 1998 PCr.LJ 1700; Emperor v. Lai Bakhsh AIR 1945 Lah. 43 and Sadhu Singh and others v. Firm Kahan Singh and others AIR 1944 Lah. 473 rel.***

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# 2012 P Cr. L J 559

***[Balochistan]***

***Before Muhammad Hashim Khan Kakar and Ghulam Mustafa Mengal, JJ***

**ALI GUL**—*Appellant versus* THE STATE—*Respondent*

*Criminal Jail Appeal No.(S) 20 and Murder Reference No. (S) 13 of 2009, decided on 29th September, 2011.*

## *Penal Code (XLV of 1860)—(Insufficiency of Motive, death sentence can not be withheld)*

*—Ss. 302(b) & 324—Qatl-e-amd, attempt to commit qatl-e-amd— Appreciation of evidence—Insufficiency of motive—Not a mitigating circumstance for reduction of sentence—Injured eye-witness was father and complainant was real brother of the deceased—On account of relationship of said witnesses with the deceased their statements could not be brushed aside nor they could be termed as interested witnesses, for the reason titat they had no direct animosity with the accused— Defence, despite lengthy cross-examination, failed to create any dent in the veracity of witnesses, except a few discrepancies, which were immaterial and not fatal to their evidence—Being the residents of same village and closely related to the deceased, their presence could not be doubted by any degree of seriousness—Occurrence having taken place in broad-daylight, there was no possibility of mistaken identity— Evidence of witnesses, did not Suffer from any material contradiction, discrepancy or inherent infirmity, but was consistent with the probabilities materially fitting in with other evidence; more particularly the medical evidence supported by the recovery of rifle from the possession of accused and positive report of the Firearm Expert—Fact that F.I.R. was promptly lodged, wherein accused was nominated had shown that the complainant had narrated truthful account of the incident—Case of prosecution was supported/corroborated by the circumstantial evidence, such as preparation of the inquest report site inspection memo and site sketch; recovery of empties; collection of blood-stained earth and clothes and Firearm Expert's report as well as motive as alleged in the F.I.R.—*

*Accused having taken away life of an innocent person, caused firearm injury to an aged person, no mitigating circumstances existed to award lesser penalty—Only on the ground of insufficiency of motive, death sentence could not be withheld, which otherwise was normal penalty for committing the murder—Prosecution had successfully proved that accused had committed the murder of deceased and caused injury to injured witness—Trial Court after proper appraisal of the evidence, had rightly convicted and sentenced the accused—Impugned judgment of the Trial Court was maintained, and murder reference was answered in the affirmative, [pp. 563, 564, 565] A, B, C & D* ***2000 SCMR 727 and 2000 SCMR 383 rel.***

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# P L D 2012 Lahore 194

***Before Mehmood Maqbool Bajwa, J***

**AMAN ULLAH**—*Petitioner versus STATION HOUSE OFFICER and others—Respondents*
*Writ Petition No.7024 of 2011, decided on 30th June, 2011*

***Criminal Procedure Code (V of 1898) — (Reference for trial of Army personnel)***

*—S. 549—Pakistan Army Act (XXXI of 1952), S. 94—Penal Code (XLV of 1860), Ss.302/109---Constitution of Pakistan, Art. 199 Constitutional petition—Delivery to military authorities of persons liable to be tried by Court Martial—Case of accused respondent being an army personnel had been separated by Sessions Court in view of the intimation sent by the competent Authority showing intention to try him by Court Martial—Validity—As and when an army personnel committed a "civil offence" Trial Court would be required to* send *reference under S.549, Cr.P.C, read with S.94 of the Pakistan Army Act, 1952 and if the Prescribed Officer had formulated opinion of institution of proceedings before a Court Martial, then ordinary criminal court would not be competent to try such army individual--- Reference sent by Trial Court was legal compulsion within the meaning of S.549, Cr.P.C. read with S.94 of the Pakistan Army Act, 1952, and in view of the decision of the Prescribed Officer, impugned order separating the trial of accused respondent was legally justified— Constitutional petition, therefore, had no force and the same was dismissed accordingly, [pp. 195, 198] A & B*

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# 2012 P Cr. L J 577

***[Islamabad]***

***Before Iqbal Hameed-ur-Rahman, CJ***

**AMEEN SAQIB**---*Petitioner Versus THE STATE and another---Respondents*

*Criminal Miscellaneous No. 553-B of 2011, decided on 20th October, 2011.*

***Criminal Procedure Code (V of 1898)---***

*----S. 497---Penal Code (XLV of 1860), Ss. 409, 419 & 109---Prevention of Corruption Act (II of 1947), S.5(2)---Criminal breach of trust by public servant, cheating by personation, abetment---Bail, refusal of---Accused was alleged to have joined his co-accused in misappropriation, purchasing and selling copies of question papers, kept secret for entry test in the University---Accused had been nominated in F.I.R. and allegation of corruption had been*

*levelled against him---Case was registered after accused and his co-accused were found involved in the crime---Accused was charged with S.409, P.P. C and S.5(2) of Prevention of Corruption Act, 1947 which being non-bailable fell within the prohibitory clause of S.497, Cr. P. C---Prosecution witnesses stood by their statements made before police under S.161, Cr.P.0 and accused had failed to show any mala fides or ulterior motive on the part of the prosecution for his false implication in the case---Case of accused was distinguishable from that of co-accused, who had already been granted bail---Accused had made extra judicial confession twice, once before the Inquiry Board of the University and then before the police by submitting an affidavit in his own handwriting and signature---Conduct of accused and co-accused had not only caused huge financial loss to the University but also impaired .the reputation and prestige of the Institution causing thousands of students from all over the country to suffer---Granting bail to accused would have amounted to encouraging such heinous crimes in the society---Post-arrest bail of accused was dismissed accordingly.* ***Muhammad Yaqub v The State 1998 PCr.LJ 638; Muhammad Musa v The State and 2 others 1999 PCr.LJ 1260 and Muhammad Boota r The State 2005 YLR 1339 ref***

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# 2012 P Cr. L J 599

***[Federal Shariat Court]***

***Before Shahzado Shaikh and Rizwan All Dodani, J J***

**Mst. NADIA**—*Petitioner versus THE STATE—Respondent*

*Criminal Miscellaneous No. 20/L of 2011 in Criminal Appeal No.llO/L of 2010, decided on 6th October, 2011.*

***Criminal Procedure Code (V of 1898)— (Suspension of sentence, refused to women)***

*—S. 426—Bail, refusal of—Counsel for accused sought bail of appellant on the ground that female appellant was in jail along with an innocent infant, aged nine months, who was born in jail—Counsel for appellant had raised the point that there were no proper facilities and conditions suitable to keep the child in jail—Report of the Jail Superintendent indicated that right from the day of birth, the child, which had become nine months and was with her mother/appellant, was being provided regular medical care, regular feed etc. as a necessary welfare measure according to the law—Counsel for appellant had pressed mainly on the ground of compassion, which, in fact, had already been shown by the Trial Court by not awarding the death sentence to the lady convict/appellant—Statement of appellant under S.342, Cr.P.C. revealed that she had been to jail earlier also, which had shown that she was habitual and a desperado for the society—No statutory provision, or compassion, or any precedent in congruence on all fours to support the bail plea being available, bail was refused, [pp. 600, 601, 602, 603] A, B, C & D*

***Mst. Sitara Bibi v. The State 2003 PCr.LJ 402; Mst. Nusrat v. The State 1996 SCMR 973; Liaquat and another v. The State 1999 PCr.LJ 1004 and PLD 1971 SC 617 distinguished.***

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# 2012 P Cr. L J 677

***[Lahore]***

***Before Rauf Ahmad Sheikh, J***

**ABRAR AHMAD**---*Petitioner* **Versus** *DISTRICT POLICE OFFICER, DISTRICT VEHARI and 3 others---Respondents*

*Writ Petition No. 9477 of 2011, decided on 27th September, 2011.*

***(a) Criminal Procedure Code (V of 1898)---***

*----S. 154---Penal Code (XLV of 1860), Ss.302/148/149---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Registration of second F.I.R.---Scope---F.I.R. had been registered on the statement of the complainant (petitioner) but subsequently his contention that he had been misled by one of the witnesses and murder was actually committed by respondents and not the accused nominated in F.I.R., so second F.I.R. should have been registered, was without force---Complainant could not claim that his second statement be recorded under S.154, Cr.P.0 and fresh F.I.R. be registered---Constitutional petition was dismissed accordingly.*

***(b) Criminal Procedure Code (V of 1898)---***

*----S. 154---Information in cognizable cases---Registration of second F.LR.---Scope---Under S.154, Cr.P.C, S.H.O is under obligation to record the statement of the informant, when information regarding commission of cognizable offence is furnished, but once F.I.R. has been recorded on the statement of the informant, he cannot claim that his second statement be recorded under S. 154, Cr. P. C and fresh F.I.R. be registered---If person other than complainant/first informant furnishes new facts and fresh information, the recording of the second F.I.R. is not barred but* ***the first informant cannot insist on registration of the second F.I.R.***

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# 2012 P Cr. L J 581

***[Lahore]***

***Before Ijaz Ahmad Chaudhry, C.J***

**Mst. NEELAM PARVEEN**---*Petitioner Versus THE STATE and 7 others---Respondents*
*Criminal Revision No. 952 of 2009, heard on 5th July, 2011.*

***(a) Criminal Procedure Code (V of 1898)---***

*----Ss. 200, 204 & 247---Illegal Dispossession Act (XI of 2005), Ss.3 & 4---Prevention of illegal possession of properly---**Second complaint, maintainability of**---Complainant filed private complaint under S.4 of Illegal Dispossession Act, 2005, wherein evidence was recorded and accused were summoned to face the trial---When proceedings in the said complaint were going on, the complainant absented herself from appearance before the Trial Court---Complaint was dismissed due to non-appearance of the complainant, which resulted in acquittal of accused---Complainant instituted second complaint, which too was dismissed---Validity---Under provisions of 5.247, Cr.P.C., the Trial Court had absolute jurisdiction to* ***dismiss the complaint due to non-appearance*** *of the complainant at subsequent date of hearing after summoning the accused---**Counsel for the complainant was present and in his presence case Was adjourned to the date on which complaint was dismissed and accused was acquitted**---Complainant, in circumstances, was well aware of the date of hearing and she in circumstances, could not say that her absence on the date complaint was dismissed, was neither intentional nor deliberate---Second proviso to S.247, Cr.P.C., provided that nothing in said section would apply where the offence of which accused was charged was either cognizable or non-compoundable---**Offence committed by accused was non-cognizable and the Trial Court had rightly passed the order, whereby complaint was dismissed and accused were acquitted**---Contention that Trial Court was not conferred with the powers to adjudicate upon the matter was repelled.*

***Bashir Ahmed v. Akbar and others 1995 PCr.LJ 1995 distinguished.***

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# 2012 P Cr. L J 588

***[Peshawar]***

***Before Fazql-i-Haq Abbasi and Mian Fasih-uLMulk, J J***

**NADIR SHAH**—*Appellant versus THE STATE and others—Respondents*

*Criminal Appeal No. 28 and Murder Reference No.2 of 2011, decided on 25th October, 2011.*

***(a) Penal Code (XLV of I860)— (Dying declaration, death confirmed)***

*—S. 302(b)—Qanun-e-Shahadat (10 of 1984), Art. 46—Qatl-e-amd— Appreciation of evidence—Dying declaration—Scope—Deceased when injured and able to talk, lodged report within 45 minutes of the occurrence and had not alleged any motive—Dying declaration was made by the deceased properly without any delay in a critical condition—No false implication of accused because no motive was alleged by the deceased nor suggested by defence—No specific mode of\ making a dying declaration was prescribed, even if it was oral—Dying declaration made soon after the occurrence at the time when the deceased was under the apprehension of death—When doctor had] stated that the injured was conscious and opined that he was able to\ talk, the same could not be discarded on the presumption of tutoring, especially when it was not suggested by the defence to the scribe-Dying declaration was also corroborated by the statement of the! prosecution witness who was a cousin of deceased; and also living in j the neighbourhood—No enmity or reason for false implication of accused was suggested by the defence—Mere relationship with the \ deceased was no ground for discarding the statement of the witness, I when evidence was otherwise reliable, confidence-inspiring and trustworthy—Dying declaration was further corroborated by the recovery of blood from the place of occurrence, matching with the blood-stained garments of the deceased—Unexplained abscondence of accused for about eight years was another strong corroborative piece of evidence—Arrest of accused from a distant place, was an important circumstance indicative of his guilt—Prosecution had proved its case against accused by reliable, trustworthy and confidence-inspiring evidence beyond any shadow of doubt—Impugned judgment passed by the Trial Court was based on correct appraisal of evidence and sound reasoning—Death sentence awarded to accused, was confirmed, in circumstances, [pp. 593, 594, 595] A, C, E & H*

***PLD 2006 SC 255; 1978 SCMR 303; NLR 2004 Cr.L 213; PLD 1962 W,P. Kar. 800; 2001 SCMR 1474; 2010 SCMR 55; PLD 2004 SC 367 and PU 2005 SC 500(sic.) ref.***

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# 2012 P Cr. L J 630

***[Peshawar]***

***Before Nisar Hussain Khan, J***

**SHER ALI KHAN** *and 6 others---Petitioners* **Versus** *Haji ATTA ULLAH and 2 others---Respondents*

*Criminal Miscellaneous Quashment Petition No.8 of 2011, decided on 30th November, 2011.*

***(a) Criminal Procedure Code (V of 1898)--- (Quashing of FIR, Refused)***

*----Ss. 157, 169, 173 & 561-A---Penal Code (XLV of 1860), Ss.324/148/149---Attempt to commit qatl-e-amd rioting armed with deadly weapon and common object---Quashing of F.I.R.---Scope-**Petitioners/accused had been charged for indiscriminate firing on the person of complainant with intention to commit qatl-e-amd**---Complainant had made a report with regard to a cognizable offence, for which Local Police was legally bound to register, which Police did so after conducting inquiry under S.157(1), Cr.P.C.---Matter being still at investigation stage, accused could put forward their defence version before the Investigating Officer, who was supposed to dig out the truth, during*

*investigation---If the Investigating Officer would find the allegations in the F.I.R. as fake, he could proceed under Ss.169 and 173, Cr.P.C. and other enabling legal provision in that behalf---Petitioners had sought quashing of F.I.R., which was still under investigation--High Court declined interference in the case when it was at investigation stage, either by exercising constitutional jurisdiction or its inherent powers under 5.561-A, Cr.P.C.---Idea behind such principle was that the Police should be allowed to perform its duty in its own sphere and to reach at a definite conclusion with regard to complicity or innocence of the accused---Investigating Officer and Incharge of Police Station had been vested with powers under Ss.169 and 173, Cr.P.C. to submit their report with their opinion, if evidence in the case was found deficient or there were no reasonable grounds to justify the forwarding of accused for trial---On submission of. report under 5.173, Cr.P.C. for trial, accused could seek his acquittal under S.249-A or 265-K, Cr.P.C., at any stage from the Trial Court---Provisions of 5.561-A, Cr.P.C. were sparingly invoked, especially when there were no other provisions available to accused---Particularly, at investigating stage of the case---Points agitated, investigation required appreciation and analysis of evidence which exercise could only be undertaken by the Trial Court after full dress trial of the case---**High Court**, while exercising inherent powers, **would only interfere**, when **there was any jurisdictional defect, patent violation of some provision of law, allegation as contained in complaint or F.I.R., even if believed, no case was made out and continuation of proceedings would amount to sheer abuse of process of the court; or an endeavour was made to enforce civil liability through the machinery of criminal court/law-**---No such infirmity had been pointed out in the case, which could warrant interference of the court for exercise of its inherent jurisdiction under S.561-A, Cr. P. C. ---Petition was dismissed.*

***Muhammad Bashir v. SHO, Okara Cantt and others PLD 2007 SC 539 and Brig. (Retd.) Imtiaz Ahmed v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142 rel.***

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# 2012 P Cr. L J 696

***[Lahore]***

***Before Ch. Muhammad Tariq and Sayyed Mazahar All Akbar Naqvi, J J***

**MUHAMMAD ARIF**—*Petitioner versus NAZEER AHMED and others—Respondents*
*Criminal Revision No. 106 and Criminal Miscellaneous Nos.l and 2-M of 2011, decided on 24th May, 2041.*

***Criminal Procedure Code (V of 1898)— (Revision against order of ATA court, not maintainable) (Summoning of accused, order upheld)***

*—Ss. 435, 439 & 561-A—Anti-Terrorism Act (XXVII of 1997), Ss.25, 31 & 32—Penal Code (XLV of 1860), Ss.365-A/337-A(i)/337-F(v) 420'468/471/148/149—Kidnapping or abduction for extorting property etc., causing hurts, theft after preparation made for causing death etc. cheating, forgery for purpose of cheating, using as genuine a forged document, rioting armed with deadly weapons—Criminal revision— Maintainability—Impugned order had been passed by the Ami-Terrorism Court—Anti-Terrorism Act, 1997, had no provision far challenging the order of Anti-Terrorism Court by way of revision under Ss. 435, 439, Cr.P.C. or any application under S.561-A. Cr.P.C: Sections 25, 31 and 32 of the Anti-Terrorism Act, 1997, which were to be. read in conjunction with each other, did not permit the order passed by, Special Court to be challenged in revision or under the inherent jurisdiction of High Court—Revision petition, therefore, was not maintainable under the law—However, Trial Court had passed the impugned order on the basis of the preliminary statements of the complainant and his witnesses and taking into consideration copies of the medico-legal reports and the cheques*

*etc. brought on record and had rightly summoned the petitioner as an accused in the .private complaint—Said order was well-versed from every angle and did not suffer from any legal infirmity….Revision petition was consequently dismissed in limine being not maintainable in law. [pp. 698, 699] A, B & C*

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# 2012 PCr. L J 731

***[Islamabad]***

***Before Muhammad Anwar Khan Kasi, J***

**Mufti PERVAIZ MANZOOR**—*Petitioner versus THE STATE and 2 others—Respondents*

*Writ Petition No.782-Q of 2011, decided on 20th May, 2011.*

***Constitution of Pakistan— (Quashing of FIR, Allowed, case of civil liability)***

*—Art. 199—Penal Code (XLV of 1860), S. 406—Constitutional petition—Criminal breach of trust—Quashing of F.I.R.—Complainant was tenant of petitioner, against whom eviction order had been passed by Rent Controller—Petitioner sought quashing of F.I.R. on the ground that F.I.R. was registered with mala fide intention to harass the petitioner—Validity—Contentions of complainant were nowhere accepted in civil litigation and he did not personally issue any cheque towards payment of sale and his admitted position as tenant had been decided by civil courts—F.I.R. after 4-1/2 years of alleged incident and after six months of filing of civil suit could not have been lodged—Allegations did not seem to be justified on the basis of record—High Court under Constitutional jurisdiction had ample powers to quash proceedings of a criminal case, if no offence was made out—Dispute between the parties was entirely of civil nature, which was converted into criminal proceedings with ulterior motives—Where exceptional circumstances exist, the powers under Art. 199 of the Constitution or under S.S61-A, Cr.P.C. could be exercised—High Court quashed the F.I.R. registered against petitioner—Petition was allowed in circumstances, [p. 734] A & B*

***2002 PCr.LJ 218; 2000 SCMR 122; 2008 SCMR 76; 2006 SCMR 276; PLD 1997 SC 275 and 2005 PCr.LJ 1681 ref.***

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# 2012 P Cr. L J 734

***[Peshawar]***

***Before Nisar Hussain Khan, J***

**SHAFQATULLAH KHAN alias SHAUKAT KHAN** *and 2 others—Petitioners versus JEHAN ZEB KHAN and another—Respondents*

*Criminal Revision No.32 of 2011, decided on 1st December, 2011.*

***Criminal Procedure Code (V of 1898)— (Plea of load shedding, during cross examination; application of accused for summoning of Local Grid Station's official, was dismissed)***

*—5. 540—Power to summon material witness or examine persons present—Plea raised by accused for the first time during cross-examination of prosecution witnesses— Accused (petitioners), on conclusion of prosecution evidence, filed an application under S.540, Cr.P.C. for summoning of local Grid Station's official along with record, to prove the defence stance that at the relevant time of occurrence, there was load-shedding in the area—Application of accused was dismissed—Validity—Accused, on completion of investigation, filed application for reinvestigation, before Inspector-General of Police after which the case was reinvestigated— Application for reinvestigation did not bear a single word qua load-shedding in the area and statements of accused under S.161, Cr.P.C. also did not raise*

*any such plea—Statements of accused's (defence) witnesses produced by accused during reinvestigation revealed that none of them had stated about any load-shedding at the time of the occurrence—One of accused's (defence) witnesses had clearly stated in his statement before the Investigating Officer that on the night of the occurrence, he was watching a cricket match and came out after said match was over and soon thereafter heard fire shots—Two other accused's (defence) witnesses had also made statements in the same strain and all said witnesses belonged to the same area where the occurrence took place, therefore, presumably electric power was available at the time of the occurrence—Accused did not take plea of load-shedding in their application for reinvestigation, rather their own witnesses had stated that they were watching a cricket match at the time of occurrence and it was only after about one and a half year, that accused's counsel put suggestion of load-shedding to prosecution witnesses during their court statements—No justification was available in peculiar circumstances of the case to summon a witness and record, to substantiate plea of the defence which had been raised for the first time by accused's counsel during cross-examination of the prosecution witnesses, when there existed no such circumstance on the record inkling in that regard—If accused's plea was allowed, the A flood gates of such like applications would break open and in each and every case, the accused would seek summoning of witnesses and record on every hypothetical question put by defence counsel on any prosecution witnesses, which was never the intention of the legislature , behind the enactment of S.540, Cr.P.C—Revision petition was dismissed in circumstances, [pp. 736, 737, 738, 739] A, B, C, D & E*

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# 2012 P Cr. L J 739

***[Federal Shariat Court]***

***Before Syed Afzal Haider and Shahzado Shaikh, JJ***

**MUHAMMAD ASLAM** *alias SAIF and another---Appellants* **Versus** *THE STATE--Respondent*
***Jail Criminal Appea****l No. 153/I of 2009, decided on 13th January, 2011.*

***(a) Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)---***

*---Ss. 10 & 11---Zina or zina-bil-jabr liable to Tazir and kidnapping---Appreciation of evidence---Kidnapping---Basic ingredient---No element of delay existed in reporting the offence of rape---Element of force was not essential in the case of kidnapping---Basic ingredient of the offence of kidnapping was the element of taking or enticing a minor out of the keeping of lawful guardian of minor without consent---Victim girls in the present case, were found to be not only under 16 years of age, but had also not attained puberty, while accused were grown up persons---Suck was indeed cruel debauchery---**Rape in case having been committed within four walls of a secure building, it was futile to link for ocular evidence which should corroborate the allegations of the victim---**Medical evidence duly supported by the report of Chemical Examiner, was sufficient corroboration of the factum of sexual intercourse which account had been provided by the two victims in the case---No evidence 0f enmity existed between accused and the complainant party to impel the latter to involve accused person falsely and thereby risk the future of minor girls---Rape was committed with minor girls and accused had violated the trust and confidence reposed in them by the parents of the minor victims---Accused, did not deserve any concession or sympathy---Argument that the site plan of the places of occurrence was not made, did not demolish the direct evidence of rape---Site plan was not a substantive piece of evidence---Factum of zina-bil-jabr by accused persons with two minors having been proved by the prosecution, verdict of the Trial Court had been maintained, in circumstances.*

***(b) Criminal Procedure Code (V of 1898)---***

*----**S. 367---Contents of judgment---Object of S. 367, Cr.P.C**.-General trend was that while writing judgment, the provisions of S.367, Cr.P.C., were not observed---According to section 367, Cr.P.C., a judgment must contain the points for determination, the decision thereon and the reasons for the decision---Provisions of S.367, Cr.P.C. were mandatory; and were intended to constitute the substance as distinguished from mere form of judgment---Section 367, Cr.P.C. was based upon good and substantial ground of public policy which was fundamental to the administration of justice---Object of that section was to let accused and Appellate Court know that the Trial Judge applied his mind on the ingredients of the offence, gravamen of the charge as well as the related points requiring judicial determination.*

***Abdul Rasheed Munshi and 3 others v. The State PLD 1967 SC 498; Ashiq Hussain and another v The State and 2 others 2003 SCMR 698; Abdul Sattar v. Sher Amjad and another 2004 YLR 580 and Sahab Khan and 4 others v. The State and others 1997 SCMR 871 rel***

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# 2012 P Cr. L J 757

***[Sindh]***

***Before Shahid Anwar Bajwa, J***

**IMRAN MEHMOOD** *and another—Applicants versus THE STATE—Respondent*

*Criminal Miscellaneous Application No. 11 of 2011, decided on 28th December, 2011.*

***Criminal Procedure Code (V of 1898)— (Cognizance by Magistrate, case sent for trial; Accused had not sought stay of criminal proceedings from trial court rather challenged the order, Petition Dismissed)***

***—S.561-A—Penal Code (XLV of I860), Ss.420/468/469/471/408/34— Cheating, forgery, using as genuine a forged document, criminal breach of trust by clerk or servant—Application for quashing of order—Applicants/accused had sought quashing of order passed by Magistrate—All that the Magistrate had done, was that he took cognizance and sent the matter to the Trial Court for proceedings with the trial—If applicants felt that trial should be stayed, they should have in the first place approached the Trial Court to stay the proceedings, but they had not done so—What had been challenged by the applicants, in the application, was the very act of taking cognizance by the Judicial Magistrate and it was premature for the applicants to contend that since civil suit was pending, the criminal trial be stayed which was not germane to the question, whether cognizance had rightly been taken or not—Magistrate had specifically come to the conclusion that there was documentary evidence available against accused—Once Magistrate had come to the conclusion, and there was documentary evidence, it was not domain of the Magistrate to enter into exercise of evaluating that evidence; and then deciding guilt or innocence of the person alleged to have been committed as stated in the F.I.R.—Magistrate had not passed judicial order he had just seen as to whether prima facie, there was material in respect of allegations—What was the evidentiary worth of such material was not domain of the Magistrate to decide— Contention of counsel for the applicant that Magistrate had merely passed order in mechanical manner, was not borne on the record— Application for quashing the order of the Magistrate was dismissed, [pp. 765, 766, 767] A, B & C***

***Muhammad Siddique v. S:H.O. Sadar, Sialkot and 4 o'thers PLD 1994 Lah. 407; Mushtaq Raj v. Magistrate 1st Class and others 1994 PCr.LJ 497; Bahadur and another v. The State and another PLD 1985 SC 62; Dr. Ghulam Mustafa Solangi and 5 others v. The State 2005 PCr.LJ 1638; A Habib Ahmed v. M.K.G. Scott Christian and 5 others PLD 1992 SC 353; Akbar Ali v. Additional Sessions Judge, Faisalabad and 7 others PLD 2007 Lah. 534; Malik Khuda Bakhsh v. The State 1995 SCMR 1621; Haji Muhammad Ashiq v. The State and another 2006 MLD 491; Tariq Mehmood and others v. The State and others 2004 MLD 1113; Muhammad Ibrar v. The S.H.O. and others 1999 MLD 2532; Mrs. Shamsunnisa Bakhtiar and another v. The State and others 1989 PCr.LJ 2451; Abdul Khaliq and another v. Civil Judge and another 2010 YLR 408; Shamsuddin and 2 others v. The State and 3 others 2010 PCr.LJ 115; Ahmed Saeed v. The State and another 1996 SCMR 186; Muhammad Ramzan v. Rahib and others PLD 2010 SC 585; Mst. Naseer Begum's v. Sain and 7 others 1972 SCMR 584 and Muhammad Akbar v. The State PLD 1968 SC 281 ref.***

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# 2012 M L D 579

***[Lahore]***

***Before Sardar Muhammad Shamim Khan, J .***

**MUHAMMAD RAMZAN—***Petitioner versus THE STATE and others Respondents*

*Criminal Miscellaneous No.721-B of 2010, decided on 19th April, 2010.*

***Criminal Procedure Code (V of 1898)—***

*—S. 497—Penal Code (XLV of 1860), S.376(2)~-Rape—Bail, refusal of—Accused was nominated in the F.I.R. with the specific allegation of having committed zina-bil-jabr with the complainant along with co-accused turn by turn—Medico-legal report of the complainant had, prima facie, supported the said allegation—Delay of 7/8 days in lodging the F.I.R. was no ground to enlarge the accused on bail, as bail application could be decided only on the basis of tentative assessment of evidence of prosecution—Charge against the accused had been framed, but the trial was being delayed by the • accused, as haitnesses were not being cross-examined by his counsel—Charge against accused besides being heinous fell within the prohibitory clause of S. 497(1), Cr.P.C.—False involvement of accused in the case was not pleaded—Bail was declined to accused in circumstances, [p. 580] A*

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# 2012 M L D 581

***[Sindh]***

***Before Syed Hasan Azhar Rizvi, J***

**MUHAMMAD ANEEQ—***Applicant versus THE STATE—Respondent*

*Criminal Bail Application No. 1094 of 2011, decided on 25th October, 2011.*

*Criminal Procedure Code (V of 1898)—*

*—S. 497—Penal Code (XLV of 1860), S.392/34—**Robbery—Bail, refusal of**—Nothing had been brought on-record by accused that he had any enmity or ill-will with the complainant—**Snatched motor cycle was recovered from the possession of accused while he was driving the same**—Accused along with his bail application had enclosed memo of arrest and recovery, where engine and chassis number Of the snatched motor cycle were mentioned—Matter fell within prohibitory clause of S.497, Cr.P.C. bail application of accused, was dismissed in circumstances, [pp. 582, 583] A & B*

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# 2012 P Cr. L J 776

***[Lahore]***

***Before Muhammad Qasim Khan, J***

**MUHAMMAD NAWAZ—***Petitioner versus ADDITIONAL SESSIONS JUDGE/JUSTICE OF PEACE, BAHAWALPUR CAMP AT YAZMAN and 3 others—Respondents*

*Writ Petition No.3429 of 2008/BWP, decided on 24th February, 2011.*

***(a) Criminal Procedure Code (V of 1898)— (Justice of peace can not decide application on the basis of special oath)***

*—Ss. 22-A(6), 22-B & 6—Oaths Act (X of 1873), Ss. 8, 9, 10 & 11— Constitution of Pakistan, Art. 199—Constitutional petition—Power of courts to tender oaths—Duties and powers of Justice of Peace— Scope—Registration of F.I.R.—Petitioner had filed constitutional petition against the order of Justice of Peace on the*

*premise that Justice of Peace had no jurisdiction to decide the application under S.22-A, Cr.P.C. on special oath and even otherwise no such oath was taken by the Justice of Peace—Justice of Peace was not 'a court' within the meaning of S.6, Cr.P.C. and being an ex-officio Justice of Peace he was not only required to exercise the power during offite hours but was Justice of Peace for twenty four hours and could exercise powers anywhere at any time within its territorial jurisdiction—Powers conferred upon Justices of Peace were neither judicial nor supervisory, rather they were administrative in nature and such powers had to be used within the framework of S.22-A, Cr.P.C.— Functions and directions issued by Justice of Peace could not be equated with judicial orders/judgments—Proceedings before such ex-officio Justice of Peace could not be equated with proceedings before a court of law—Justice of Peace being not a court had no authority or jurisdiction to offer special oath on the asking of the parties—Justice of Peace had erred in law and entered into a domain which was beyond his jurisdiction and decided the matter after taking oath from the parties—Impugned order of Justice of Peace was set aside being derogative of law and case was remanded to Justice of Peace to decide the matter afresh in the parameters of Ss.22-A and 22-B of Cr.P.C.—Constitutional petition was disposed of accordingly, [pp. 778, 779] A, B, D, F & G* ***PLD 2007 SC 539 and Khizar Hayat v. Inspector-General of Police, Punjab, Lahore PLD 2005 Lah. 470*** --------

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# 2012 P Cr. L J 786

***[Sindh]***

***Before Shahid Anwar Bajwa and Muhammad Ali Mazhar, JJ***

**ABDUL JABBAR** *and another—Applicants versus THE STATE—Respondent*

*Criminal Bail Application No.D-718 of 2011, decided on 21st December, 2011.*

***(a) Criminal Procedure Code (V of 1898)— (Police encounter, accused found in injured condition at the spot, bail refused)***

***—S. 497—Penal Code (XLV of 1860), Ss. 302/324/353/148/149—West Pakistan Arms Ordinance (XX of 1965), S 13-D—Explosive Substances Act (VI of 1908), Ss. 3 & 4—Anti-Terrorism Act (XXVII of 1997), S.7—Qatl-e-amd, attempt to commit qatl-e-amd, assault or criminal force to deter public servant from discharge of his duty, rioting armed with deadly weapons, possession of illegal weapons, causing explosion likely to endanger life or property, attempt to cause explosion or for making or keeping explosive with intent to endanger life or property, acts of terrorism—Bail, refusal of—Gang of dacoits—Police encounter—Both accused were found in injured condition after police had an encounter with the gang of armed dacoits—No mala fide or any enmity had been alleged against the police officials to involve the accused in the case and both the accused were arrested on the spot and weapons were also recovered from them—Police encdunter was genuine as record showed that nine dacoits and one police official lost their lives during the encounter—Delay in lodging F.I.R. was not sufficient ground per*** **SC** ***to grant bail to accused without attending all other relevant circumstances—No reasonable grounds existed to believe that the accused were not guilty of non-bailable offence—Bail application of accused was dismissed in circumstances, [pp. 788, 789] A, C, D & E***

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# 2012 PCr. L J 796

***[Balochistan]***

***Before Mrs. Syeda Tahira Safdar and Muhammad Noor Meskanzai, J J***

***BILAL AHMED—****Appellant versus THE STATE—Respondent*

*Criminal Jail Appeal No. 12 of 2010, decided on 27th October, 2011.*

***Explosive Substances Act (VI of 1908)— (No sanction obtained, FIR & preliminary investigation by CIA, recovered material was not sent to Ballistic Expert, Section 27-A of ATA, presumption against accused)***

*—Ss. 4(b) & 7—Anti-Terrorism Act (XXVII of 1997), Ss.l9(8-b) & 27-A—Criminal Procedure Code (V of 1898), S.510—Possessing explosive substance—Appreciation of evidence—Counsel for the accused had contended that as proper sanction was not obtained from the Provincial Government for prosecution of the case as required under S.19(8-b) of Anti-Terrorism Act, 1997, the proceedings conducted by the Trial Court were in violation of relevant provision of law; that the F.I.R. had been registered by CIA, who had no authority to make investigation in the matter and their only duty was to assist the Police; that Investigating Officer was bound to investigate the matter independent of the material collected by CIA, which had adversely affected the case of the prosecution; that no report of expert was present on record, nor even the material alleged to be recovered was examined by the expert, only an unauthorized report had been produced during course of evidence, which was not admissible in evidence under the law and that as false case had been made out against accused, which the prosecution had failed to establish, accused was liable to be acquitted—Validity—Prosecutor-General though had conceded that no such sanction was obtained, but as accused was tried by a Special Court constituted under Anti-Terrorism Act, 1997, procedure as provided in the special statute should be adopted and S.19(8-b) of Anti-Terrorism Act, 1997, which had provided the procedure had been complied with—Proceedings were rightly held by the Trial Court against accused, in circumstances—Trial Court having discussed the objections and had arrived at the conclusion that it was a mere irregularity and not an illegality, which could not vitiate the case of the prosecution, which otherwise, was based on convincing and* j *direct evidence—Personnel of CIA, in the case, had not made the investigation, but their act was confined only to the extent of apprehending of the suspected person effecting of recovery, preparations of seizure memo and parcels—Investigating Officer was separately appointed, who did the job and submitted Police report/challan before the court—Act of CIA, in circumstances, did not vitiate the proceedings, as it was nowhere established that prejudice had been caused to the accused—In view of S.510, Cr.P.C, production of Chemical Examiner, Assistant Chemical Examiner, Serologist, Finger Print Expert or Firearm Expert, subject to appointed by the Government were not required—Recovered material, in the case was not sent to the Ballistic Expert for obtaining his opinion—Sending'of recovered material for an Expert opinion was not mandatory in all cases—Opinion of the expert, though was an important piece of evidence, but where the prosecution established its case with direct and confidence inspiring evidence, the report of an expert was of less value—Section 27-A of Anti-Terrorism Act, 1997 had provided a presumption against a person being found in possession of any explosive substance—Prosecution had discharged the burden while establishing recovery of explosive substance from possession of accused—Burden thus shifted on the accused to establish the contrary, which accused failed—Accused, having failed to make out a case in his favour, his appeal was dismissed being without merits, [pp. 797, 799, 800, 801,802] A, B, C, D & E*

***PLD 1997 SC 408; Muhammad Hanif v. The State PLD 1993 SC 895; Sardar Khan v. The State 1998 SCMR 1823; Sarfraz alias Sappi v. The State 2000 SCMR 1758; Noor Muhammad v. The State 2005 SCMR 1958 rel.***

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# 2012 P Cr. L J 804

***[Lahore]***

***Before Muhammad Anwaarul Haq, J***

**MUHAMMAD NASIR IQBAL**—*Petitioner versus THE STATE and another—Respondents*

*Criminal Miscellaneous No. 2138-B of 2012, decided on 12th March, 2012.*

***Criminal Procedure Code (V of1898)—***

*—S. 497—Penal Code (XLV of 1860),* ***Ss. 392 & 411—Robbery, dishonestly receiving property stolen—Bail, refusal of—****Allegation -against accused was that he along with his co-accused committed robbery on gun-point in 'the house of the complainant and took away different articles with them—Validity—Accused was not named in the F.I.R., but had been named through supplementary statement of the complainant, wherein she categorically stated that she incidentally saw the accused along with his co-accused at a restaurant, and on knowing the whereabouts of both of them she instantly disclosed such information to the police—Record confirmed that accused was a habitual offender and five other criminal cases of similar nature had been registered against him—Allegedly robbed cash, mobile phone and Other articles had been recovered at the instance of the accused— Accused has failed to show any ill-will or enmity of the complainant to falsely involve him in the case—Accused had been charged with S.392, P.P.C., which fell within the prohibitory clause of S.497, Cr.P.C.— Sufficient evidence was available on record to connect the accused with the alleged crime—Bail petition, of accused was dismissed, in circumstances, [pp. 805, 806] A &* ***B***

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# 2012 P Cr. L J 806

***[Sindh]***

***Before Muhammad Tasnim, J***

**MUHAMMAD ALI** *and 3 others—Applicants versus THE STATE—Respondent*

*Criminal Bail Application No. 1022 of 2009, decided on 29th September, 2011.*

***(a) Criminal Procedure Code (V of1898)—***

*—S. 498—Interim pre-arrest bail—Once interim pre-arrest bail had been granted by the court, bail application be decided on merits instead of dismissing same on technical ground, [p. 812] A*

***(b) Criminal Procedure Code (V of 1898)—***

*—S.498—High Court Benches Rules, 1987, R. 7—****Filing bail application direct before High Court****— Person in compelling circumstances, could approach the High Court without filing bail application before the lower judicial forum—Applicants/accused in the present case, tried their best to file bail application before the Sessions Judge, but due to fear of their arrest they tried to approach the circuit Bench of the High Court, but when they found Police available at said circuit Bench, they filed bail application at the Principal Bench of the High Court—Bail application filed by accused persons at the Principal Bench was maintainable, in circumstances, [p. 813] B*

***Rais Wazir Ahmad v. The State 2004 SCMR 1167; Rana Muhammad Arshad v. Muhammad Rafique and another PLD 2009 SC 427; Haji Muhammad Ali Khan and others v. The State 2010 PCr.LJ 310 and Manzoor Hussain v. The State PLD 2008 Kar. 157 distinguished***

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# 2012 P Cr. L J 833

***[Islamabad]***

***Before Shaukat Aziz Siddiqui and Muhammad Anwar Khan Kasi, J J***

**TARIQ MABOOD**—*Appellant versus THE STATE—Respondent*

*Criminal Appeal No.328 of 2009, decided on 16th February, 2012*

***(a) Control of Narcotic Substances Act (XXV of 1997)—( reasonable quantity for analysis, one gram, heroine, sufficient)***

*—S. 9(c)—Control of Narcotic Substances (Government Analysts) Rules, 2001, R.4—Possession and trafficking of narcotics—Appreciation of evidence—Quantity of narcotic to be dispatched for analysis—Scope—"Reasonable quantity"—Interpretation—Trial court had convicted the accused under S.9(c) of the Control of Narcotic Substances Act, 1997—Contention of accused that out of five packets allegedly recovered from him containing 5 kgs of heroin, only 1 gram of heroin from each packet was sent for analysis, which was violation of law and was not sufficient quantity—Validity—According to Rule 4 of Control of Narcotics Substances (Government Analysts) Rules, 2001, "reasonable quantity" of narcotic was required to be dispatched to the nearest testing laboratory—Plain interpretation of reasonable quantity was that a quantity by which analysis may be carried out to report that subject quantity was narcotic—Authority which carried out the chemical examination did not object to the quantity of narcotic as being either insufficient or unreasonable—Accused had made no effort to call the chemical examiner as witness—Entire case record showed that accused had never challenged the fact that recovered substance was heroin—Technical grounds and scientific frictions could not be made basis to extend any benefit to the accused—Accused had not established any mala fide against the complainant-police officials—Trial Court had passed the impugned judgment in accordance with the evidence and material available on file—Appeal of accused was dismissed and judgment of Trial Court was upheld, [pp. 836, 837] A, B, C & D*

***PLD 1949 Lah. 175; PLD 2004 SC 856; 2007 PCr.LJ 1984; 2008 SCMR 1991; 2008 YLR 2232; 2006 YLR 2826 and PLD 1959 Pesh. 176 distinguished.***

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# 2012 PCr. LJ853

***[Federal Shariat Court]***

***Before Shahzado Shaikh and Rizwan Ali Dodani, J J***

**Mst. NASREEN AKHTAR**—***Petitioner versus HASNAIN MEHDI and 6 others—Respondents***

***Criminal Revision No. 1 5 / 1 of 2004, decided on 9th February, 2012.***

***(Occurrence of Zina in year 1995, No FIR, an inquiry was conducted by Magistrate, but still no FIR was registered, Complaint was filed in year 1996 which was dismissed but Federal Shariat Court in year 2012 remanded the case for conducting the regular trial )***

*(a)* ***Criminal Procedure Code (V of 1898)-****—S. 204—Issue of process—Burden of proof—Scope—Burden of proof at the stage of complaint and in preliminary inquiry for the issuance of process, is quite lighter on the complainant as compared to the burden of proof on prosecution at the trial, i.e., to prove the case beyond reasonable doubt—At preliminary stage complainant is not required to discharge burden of proof in such a heavy manner, [p. 860] A*

(b) ***Criminal Procedure Code (V of 1898)—****Ss. 203 & 204—Dismissal of complaint or issue of process—Proceedings, nature of—Proceedings under S.203 or S.204, Cr.P.C. depend upon existence or non-existence of sufficient ground, which had been taken by the court* as the *existence of a prima facie* case-*Complainant* at *preliminary stage Is not required to* discharge *of heavy burden of proof, whereas prosecution has to* prove *its* case *beyond reasonable doubt,* [p. *861] B* **PLD 2007 SC 9 ref.**

*(c)* ***Criminal Procedure Code (V of 1898)—****S. 200— Private complaint— Non - filing of F. I. R.—Effect— Non-registration of F.I.R. does not bar filing" of private complaint, [p. 861] C 2008 PCr.LJ 1 1 ref.*

*(d)* ***Criminal Procedure Code (V of 1898)—****S. 200— Examination of complainant— Nature and scope— Examination of complainant is not sine qua non of valid proceedings, [p. 861] D PLD 1966 SC 178 ref.*

*(e)* ***Criminal Procedure Code (V of 1898)—****Ss. 200 & 202—Private complaint—Preliminary proceedings— Purpose—Purpose behind the exercise of preliminary proceedings is to find out truth or falsehood of the accusations made in the complaint to be examined on the basis of evidence to be adduced by the complainant—Accused persons have no right of participation, until cognizance of the matter is taken by the court and accused are summoned in the complaint, [p. 861] E PLD 2002 SC 687 ref.* ***PLD 2007 SC 9; Sher Sing v. Jetendranath Sen AIR 1931 Cal. 607; 2008 PCr.LJ 1 1 ; PLD 1966 SC 178; 1998 SCMR 922 and PLD 2002 SC 687 ref.***

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# 2012 P Cr. L J 873

***[Peshawar]***

***Before Syed Sqjjad Hassan Shah and Nisar Hussain Khan, J J***

**MUHAMMAD ISMAIL**—*Petitioner versus THE STATE and 4 others—Respondents .*

*Writ Petition No.354 of 2011, decided on 21st November, 2011.*

***(a) Criminal Procedure Code (V of 1898)— (Absence of written application to SHO, FIR can not be refused; Justice of the peace can not direct adding of offences)***

*—-Ss. 22-A(6), 154 & 173— Constitution of Pakistan, Art. 199— Constitutional petition—Powers of Justice of Peace— Scope—Direction of Justice of Peace for registration of case—initially complaint by complainant against the petitioner was turned down by the Justice of Peace mainly on the ground that petitioner had provided some F.I.Rs. against the complainant, without going into the merits of the case— Said order of Justice of Peace was challenged by complainant in constitutional petition, which petition was allowed and matter was remanded to the Justice of Peace—Said order having not been challenged by the petitioner before the Supreme Court same had attained finality and Justice of Peace directed S.H.O. concerned by impugned order to register case against the petitioner—Counsel for the petitioner did not urge any grievance on the point that Justice of Peace had violated the direction of High Court—Impugned order was in accordance with direction of High Court, except the direction for insertion of specific section of P.P.C., mentioned in the complaint—* ***Objection of counsel for the petitioner qua the absence of an application/complaint to the S.H.O. in written form, was misconceived****, as S.22-A(6), Cr.P.C. did hot postulate any such command that Justice of Peace would only entertain the complaint when the grievance in written form to the S.H.O. concerned, was not redressed by registration of F.I. R,—Not imperative for the informant for any cognizable offence to convey the information of such offence in written form to the S.H.O.; it was, however, legal obligation of S.H.O. to register F.I.R. in compliance with the command of S. 154, Cr.P.C. on any information of cognizable offence—Law did not require that DPO must be arrayed in panel of respondents, while submitting a complaint before Justice of Peace, and no format was provided in the relevant provision of statute as well—While dealing with the complaint of non-registration of criminal case, Justice of Peace was obliged to consider the substance and not the form of complaint, [p. 878] A*

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# 2012 P Cr. L J 878

***[Lahore]***

***Before Sh. Ahmad Farooq and Muhammad Qasim Khan, JJ***

**Rana SHAHID MASIH**—***Petitioner versus THE STATE—Respondent***

***CM. No.l of 2011 in Criminal Appeal No.864 of 2009, decided on 4th July, 2011.***

***(a) Criminal Procedure Code (V of1898)— (Narcotics dealer, dangerous criminals) (proviso to S.426(1-A)(c),***

*—S. 426(1-A)(c), proviso (since omitted)—Suspension of sentence— Bail—Word "dangerous" used in the proviso to S. 426(1-A(c)—1 Meaning—Word "dangerous" used in proviso to S.426(1-A)(c), Cr.P.C. should be construed in its ordinary sense, which means horrible effects of an offence against society at large—Distinction is to be made between "an offence committed against an individual like theft or injury" and "an offence directed against the society as a whole for the purposes of bail"—Effects of smuggling and unlawful selling of narcotics are disastrous on the moral, social fabric of the society and accused of such offences have the potential of destroying the health and family life of a large number of people in addition to bringing a bad name for the country—Heroin, "charas" or other substance covered by Control of Narcotic Substances Act, 1997, were declared dangerous drugs basically on account of their dangerous effects on the society—Meaning of word "dangerous " can be ascertained in the light of the conduct of accused at the time of his arrest, his previous conduct, nature of offence coupled with its effect on society, his betrayal with reference to moral duties—If the word "dangerous criminal" is to be considered as previous convict, then the word "dangerous criminal" used in proviso of S.426(l-A)(c), Cr.P.C. would become completely redundant and meaningless, [p. 881] A*

***(b) Criminal Procedure Code (V of 1898****)—S. 426(1-A)(c), 1st proviso—Control of Narcotic Substances Act (XXV of 1997), S.9(c)—Suspension of sentence on ground of delay in decision of appeal, refusal of—Accused had been sentenced to imprisonment for life for having 100 kilograms of "charas" in his possession—Offence committed by accused was likely to destroy the fabric of society—Such narcotic peddlers commit these crimes not only consciously but in a well-planned manner irrespective of their hazardous impact on the society— Accused could be safely considered a "dangerous criminal" within the meaning of first proviso to S.426(l-A)(c), Cr.P.C. and he could not claim benefit of said provision of law—Petition was dismissed accordingly, [p. 882] D*

***Muhammad Asghar v. The State 1992 MLD 1554 and The State through Deputy Director, Anti-Narcotics Force, Karachi v. Mobin Khan 2000 SCMR 299 ref. (other case law PLD 2011 LHR 544)***

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# 2012 P Cr. L J 915

***[Lahore]***

***Before Rauf Ahmad Sheikh, J***

**MUHAMMAD RAMZAN**—*Petitioner* ***versus*** *ADDITIONAL DISTRICT AND SESSIONS JUDGE, KABIRWALA,* ***DISTRICT KHANEWAL and 3 others—Respondents***

***Writ Petition No.8032 of 2011, decided on 29th June, 2011.***

**(a)** ***Constitution of Pakistan (1973)—*** (***Accused in column No.2, petitioner moved application for summoning after four years, Misconceived, dismissed)***

*—-Art. 199—Criminal Procedure Code (V of 1898), Ss. 190 & 561-A— Penal Code (XLV of 1860), Ss. 324/148/149—Attempt to commit qatl-e-amd, rioting armed with deadly weapons—Constitutional petition— Summoning of respondents*

*to face trial—Petitioner had called in question order passed in revision by Sessions Judge and order passed by the Magistrate whereby both dismissed the petitioner's application to summon respondents to face trial—Local police and RIB after successive investigation had found that respondents were innocent and not connected with the commission of the offence—Effect—Police report was not binding on the courts below and they could have passed the orders for issuance of the process even without recording the evidence if it appeared from the material appended with the report under S.173, Cr.P.C. that respondents were connected with the commission of the offence—Both courts below had found that during period of almost four years, after framing of the charge, the petitioner had not raised any grievance regarding placing of respondents in Column No. 2 and did not make prayer for issuance of process against them—Efficacious remedy in the form of private complaint was available to the petitioner and he could have availed of the same— Sessions Judge had rightly observed that opinion of the police was not binding on the courts but the same could not be ignored straightaway if it was based on cogent reasons—Impugned orders passed by the courts below did not suffer from any illegality and infirmity—Petition was dismissed in circumstances, [pp. 917,918] A,B &D*

***Falak Sher and another v. The -State PLD 1967 SC 425 and Muhammad Yaqub v. The State PLD 1998 Lah. 523 distinguished.***

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# 2012 P Cr. L J 946

***[Peshawar]***

***Before Khalid Mehmood, J***

**AMIN GULGEE** *and another—Petitioners versus* SHABBIR KHAN *and 2 others—Respondents*

*Constitutional Petition No. 169 of 2010, decided on 23rd November, 2011.*

## *(a) Criminal Procedure Code (V of 1898)—*

***—Ss. 145 & 146—Constitution of Pakistan, Art. 199—Constitutional petition—Dispute concerning land likely to cause breach of peace— Petitioners were legal owners of the suit property which had been given on lease to their predecessor-in-interest—Petitioners sent an application to concerned Development Authority (Authority) to look after the property as they resided in a different city and were unable to look after the same and similar applications were sent to concerned police officials who instead of looking after the property submitted an application before the Magistrate for sealing the suit property, as some persons wanted to take over possession of the property as well as expensive articles therein—Magistrate, without any inquiry and examining the original application moved by petitioners, ordered to prepare inventory of entire articles and thereafter to seal the property—Magistrate under Ss.145 and 146, Cr.P.C, 1898, could only attach disputed property when after inquiry he was unable to satisfy himself as to which of the parties was in possession of disputed property but Magistrate neither conducted any inquiry nor satisfied himself regarding any apprehension of breach of peace over disputed property and without giving any reason directed sealing of the property— Respondent on basis of a stamp paper allegedly executed by petitioners' predecessor-in-interest, claimed to be owner in possession of suit property and prayed for handing over the same but was turned down by Magistrate, aggrieved of which he filed revision petition before the Court below after a lapse of four months, without arraying the petitioners—Court below without appreciating the facts and legal aspect of the case and without realizing that revision petition was barred by time, ordered de-sealing of the disputed property and directed bailiff to hand over possession of property in favour of respondent—Concerned Development Authority had admitted that suit property was still ownership of the petitioners but after the death of their predecessor-interest same had not been transferred in the petitioners' name—Court below did not appreciate the fact that alleged agreement deed on stamp paper was executed outside the district, where property was situated and no reference had been given to the application moved by petitioners to the Development Authority for looking after their property—Court below by overlooking***

***limitation period for revision petition and neglecting to array petitioners as a party had unilaterally ordered handing over possession of property to respondent, which amounted to grave miscarriage of justice—Constitutional petition was allowed and impugned orders of court below and Development Authority were set aside and the Authority was directed to look after the disputed property in the light of the application submitted by the petitioners, [pp. 949, 951, 952] A, C, D, E, F, G, H & I Qazi Gran v. Muhammad Jan and another PLD 1996 SC 541*** ref.

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# 2012 P Cr. L J 1082

***[Lahore]***

***Before Muhammad Qasim Khan, J***

**AMEER MAI**—*Petitioner versus JUSTICE OF THE PEACE, YAZMAN, and 3 others Respondents*
*Writ Petition No.934 of 2011/BWP, decided on 22nd February, 2011*

***(a) Criminal Procedure Code (V of 1898)—***

*-Ss. 22-A, 107 & 151—Constitution of Pakistan, Art. 199…Constitutional petition—Maintainability—Powers of Justice of Peace-Scope—Application for registration of F.I.R.—Security for keeping the peace—Arrest to prevent cognizable offences—Applicant (petitioner) ,had assailed the order passed by Justice of Peace whereby on an application filed under S.22-A, Cr.P.C, applicant sought registration of case but concerned S.H.O. was directed to obtain bonds from both the parties and to take precautionary measures under Ss.107 & 151 Cr.P.C.—Applicant's application under S.22-A, Cr.P.C. showed that applicant along with others were severely beaten but there was no medical certificates available on file in support of their contention which fact might have established the commission of the alleged offence—Said application also showed that there was a dispute between the parties about a sugar cane crushing machine installed by the respondents in front of the house of the applicant, which became a source of nuisance for the applicant but report by S.H.O. showed that no such occurrence had taken place—Disputed factual controversy between the parties required determination through detailed inquiry/ recording of evidence, which exercise could not undertaken while discharging jurisdiction under Article 199 of the Constitution of Pakistan and thus direction for registration of case could not be issued—Constitutional petition was disposed of accordingly. [pp. 1084, 1085] A, B & C*

**Rai Ashraf and others v. Muhammad Saleem Bhatti and others PLD 2010 SC 691; Muhammad Ali v. District Police Officer and others 2008 PCr.LJ 467; Muhammad Younus Khan and 12 others v. Government of N.W.F.P. through Secretary, Forest and Agriculture, Peshawar and-others 1993 SCMR 618; Muhammad Saleem Bhatti v. Byed Safdar Ali Rizvi and 2 others 2006 SCMR 1957 ref.**

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# 2012 M L D 590

***[Lahore]***

***Before Ijaz Ahmad Chaudhry C.J. and Mazhar Iqbal Sidhu, J***

**ZULFIQAR ALI** *and another—Petitioners versus THE STATE and another—Respondents Criminal Miscellaneous No.7692-B of 2011, decided on 12th July, 2011.*

***(a) Criminal Procedure Code (V of 1898)—***

*—S. 497—Drugs Act (XXXI of 1976), Ss.23/27—**Seizure of misbranded, unregistered and drugs without warranty—** Bail, refusal of—No ill-will or ulterior motive on part of the complainant party to foist a false case against accused*

*persons—Both accused were apprehended from the spot and the material collected from there, had been found to be spurious—Preparation of spurious medicine, was not only penalable act under the law, but also a sin—**Accused were not only termed as criminals, but also desperate criminals**—Case of accused persons, did not fall within the prohibitory clause of S.497, Cr.P.C, but fell within the exceptional legal clause, wherein bail could be refused to accused, despite his case not falling within the prohibitory clause of S.497, Cr.P.C.—Bail petition was dismissed, in circumstances, [pp. 591, 592, 593] A, B, C & D*

***(b) Words and phrases— — "Criminal" and "desparate"—Meaning, [p. 592] C***

# 2012 M L D 593

***[Sindh]***

***Before Nisar Muhammad Shaikh, J***

**NABIDAD** *and 2 others---Applicants Versus THE STATE---Respondent*

*Criminal Bail Application No.S-580 of 2011, decided on 3rd October, 2011.*

***Criminal Procedure Code (V of 1898) ---***

*----S. 497---Penal Code (XLV of 1860), Ss.302, 324, 337-H(2), 148 & 149---Qatl-e-amd, attempt to commit qatl-e-amd, causing hurt by rash or negligent act---Bail, refusal of---Two persons were murdered at a van stop and the motive of commission of such murder, as alleged in the F.I.R., was that the deceased persons were pursuing/ dealing/conducting the cases of the complainant party, and were prevented from doing so by the accused party---Such very fact itself was sufficient to support the case of the prosecution that accused were dangerous and hardened criminals and were not entitled for the concession of bail---Report of Superintendent Jail filed together with bail application, itself had shown that accused were also involved in another case of murder, recently registered against them---Trial Court in its judgment had mentioned that on many dates the delay in trial of the case was attributed to accused persons---Provisions for grant of bail on the ground of statutory delay, being not attracted fully in the case, bail application was dismissed with observation that accused would be at liberty to repeat their bail application to be decided by the Trial Court after hearing the parties.*

***1995 PCr.LJ 1682; 1991 PCr.LJ 534; 2006 YLR 2242; PLD 1997 Kar. 156; 2000 SCMR 79; 2011 YLR 2297; Sain Rakhio v. State 2001 YLR 859; 2002 SCMR 1381; 2004 SCMR 860; 1998 SCMR 897; 2002 PCr.LJ 963; 2004 SCMR 1160; PLD 1982 SC 424 and 1991 PCr.LJ 264 ref.***

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# 2012 M L D 607

***[Sindh]***

***Before Syed Hasan Azhar Rizvi, J***

**JOSEPH SARDAR** *-Applicant versus THE STATE—Respondent*

*Criminal Bail Application No. 1173 of 2011, decided on 3rd December, 2011*

***Criminal Procedure Code (V of 1898)—***

*497—Penal Code (XLV of 1860),* ***Ss.409/420/34—Criminal breach of trust*** *by public servant, or by banker, merchant or agent, cheating—Bail, refusal of—Accused/applicant had fully participated in business transactions; had appeared before several banks for business transactions as proprietor of the firm; got registered the firm with the Federal Board of Revenue and defrauded" the companies internationally—By the conduct of accused persons the name and prestige of country had been badly affected—Submissions and grounds mentioned in the bail application established that accused/applicant had been used as a scape-goat by the other accused persons, but such submission could not absolve him from commission of crime committed by the accused persons—Counsel for applicant having failed to make out case for grant of bail,* ***his bail application was dismissed****, [p. 610] A*

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# 2012 M L D 647

***[Sindh]***

***Before Shahid Anwar Bajwa, J***

**AMIR BUX** *alias PAPOO---Applicant Versus THE STATE---Respondent*

*Criminal Bail Application No.86 of 2011, decided on 15th July, 2011.*

***Criminal Procedure Code (V of 1898)---***

*----S.497---Penal Code (XLV of 1860), Ss.302, 324, 148, 149, 337-H(2) & 109---Qatl-e-amd, attempt to commit qatl-e-amd, rioting, armed with a deadly weapon, common object causing hurt by rash or negligent act---Bail, refusal of---Accused was present at the scene of the offence with a specific role---F.I.R. specifically stated that accused along with another fired at the deceased and medical report showed that deceased had received several injuries---Empty cartridges had been recovered from the place of occurrence---Material available before the Police was sufficient to connect accused with alleged offence---Accused was not entitled to bail on merits---Application for bail, was dismissed, in circumstances.*

***Tariq Bashir and 5 others v. The State PLD 1995 SC 34; Syed Amanullah Shah v. The State and another PLD 1996 SC 241; Mir Muhammad and another v. The State 1993 PCr.LJ 88; Amanullah and another v. The State 1997 MLD 1470; Muhammad Amin v. The State 1994 PCr.LJ 369 and Paryal v. The State 2006 PCr.LJ 121 distinguished.***

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# 2012 M L D 655

***[Lahore]***

***Before Mazhar Iqbal Sidhu, J***

**SAFIA BEGUM-**---*Petitioner Versus MUHAMMAD MUKHTAR alias MUKHA and 4 others---Respondents*

*Writ Petition No.28303 of 2011, decided on 28th December, 2011.*

***Criminal Procedure Code (V of 1898)---***

*----S.491---Habeas corpus petition---Custody of minor---Minor detenu aged 7 years had been produced in the court, who was presently living with the respondent---Minor was the step son of the deceased in which murder case his real mother was involved---Petitioner being real grand maternal mother of the minor child, through an intrigue needed his custody with a view to extract benefit in the murder case for her daughter---Respondent with whom the minor was living was the complainant of the said murder case and he was not directly related to him---Affection had developed between the minor and the respondent and the minor in the court had expressed his will to live with him---Respondent had no*

*issue---Minor had reached the brink of level of expressing his opinion and the same could not be ignored---Impugned order passed by Sessions Court as to the custody of minor needed no interference---Custody of minor was directed to remain with the respondent.*

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# 2012 M L D 665

***[Sindh]***

***Before Syed Hasan Azhar Rizvi, J***

**MUHAMMAD IMRAN BUTT**—*Applicant versus THE STATE—Respondent*

*Criminal Bail Application No. 1322 of 2011, decided on 22nd November, 2011.*

***Criminal Procedure Code (V of 1898)—***

*—S. 497—Penal Code (XLV of 1860), S.302/34—**Qatl-e-amd—Bail, refusal of—**Accused pointed out the place of incident in presence of witnesses where the deceased was murdered and his dead body was recovered**—Accused had admitted his involvement in the commission of offence—Accused had been charged with the heinous offence of killing of an innocent person—Name of accused though was not mentioned in the F.I.R., but accused led the Police party to the place of incident, which connected him with the commission of offence—Unless the unknown killers of innocent persons were dealt with in accordance with law and their cases be proceeded expeditiously in court, the alarming law and order situation could not be restored—Counsel for accused having failed to make out the case of accused for grant of bail, his application was dismissed with direction to the Trial Court to frame charge and record statements of all the witnesses within a period of three months—Bail was refused, [pp. 666, 667] A & B*

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# 2012 P Cr. L J 507

***[Lahore]***

***Before Abdus Sattar Asghar, J***

**ZAFAR IQBAL**---*Appellant Versus THE STATE and 5 others---Respondents*

*Criminal Appeal No. 444 treated as Criminal Revision No.225 of 2011/BWP of 2011, decided on 21st December, 2011.*

***(a) Criminal Procedure Code (V of 1898)---***

*----**Ss. 417(2-A), 245, 249-A, 423 & 439-A**---Penal Code (XLV of 1860), Ss.337-A(ii)/337-L(2)/34---Causing Shajjah-i-Mudihah and other hurt---Appeal against acquittal**---Conversion of appeal into revision petition**---Scope---Order of acquittal under S.249-A, Cr.P.C., was not appealable in terms of S.417, Cr.P.C. and could be assailed through revision under S.439-A, Cr.P.C.---Remarkable difference existed between the orders of acquittal passed under S.245, Cr.P.C. and under S.249-A, Cr.P.C.---Order of acquittal passed under S.245, Cr.P.C. would be appealable under S.417, Cr.P.C. as the Appellate Court could upset the order of acquittal under S.423, Cr.P.C. and pass the order of conviction accordingly---In case of acquittal under S.249-A, Cr.P.C., a finding of acquittal could not be converted into conviction in the absence of full evidence---In the present case, acquittal was granted under S.249-A, Cr.P.C. merely on the ground that prosecution had not produced any evidence showing lack of interest---Appeal being incompetent, was converted into*

*revision petition in terms of S.439-A, Cr.P.C., in circumstances.*

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# 2012 P Cr. L J 452

***[Supreme Court (AJ&K)]***

***Present: Khawaja Shahad Ahmed, C.J., Muhammad Azam Khan and Kh. Attaullah Chak, JJ***

**GHULAM RASOOL** *and others---Appellants VersusTHE STATE through Advocate-General for Azad Jammu & Kashmir Government and others---Respondents*

*Criminal Appeals Nos. 11, 12 and 13 of 2008, decided on 20th April, 2011.(On appeal from the judgment of the Shariat Court dated 2-5-2007 in Criminal Appeals Nos. 71, 67, 69, 70 of 2006 and Reference No.68 of 2006.)*

***(e) Azad Jammu and Kashmir Islamic Penal Laws (Enforcement) Act (IX of 1974)--***

***----Ss. 3, 5, 15 & 25---Criminal Procedure Code (V of 1898), Ss.30, 31, 32, 34 & 35---Qatl-e-amd---Punishment, award of---Trial Court awarded sentence of 10 years' rigorous imprisonment on five counts, in total 50 years to accused and sentences to run consecutively---Benefit of S.382-B, Cr.P.C. was also given to the accused---Shariat Court, on appeal, found that under proviso (a) of subsection (2) of S.35, Cr.P.C. a sentence greater than the originally provided for the offence could not be awarded---Section 35(2), Cr.P.C. dealt with only those courts which had limited power to order sentence---Shariat Court and the District Criminal Courts were authorized by law to pass any sentence provided for the offences---Magistrate had limited power to sentence under Ss.30, 31 and 34, Cr.P.C. while Shariat Court and the District Criminal Court could pass any sentence under S.31, Cr.P.C.---Restriction laid down in proviso to subsection (2) of S.35, Cr.P.C., was not applicable to District Criminal Court/Sessions Judge while convicting an accused---District Criminal Court could pass any sentence authorized by law.***

***Bashir and 3 others v. State PLD 1991 SC 1145 rel.***

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# 2012 P Cr. L J 1817

***[Islamabad]***

***Before Noor-ul-Haq N. Qureshi, J***

**ANJUM MUBASHAR MUGHAL**---*Petitioner versus ADDITIONAL DISTRICT AND SESSIONS JUDGE, ISLAMABAD and another---Respondents*

*Writ Petition No. 1503 of 2010, heard on 8th May, 2012.*

***(b) Illegal Dispossession Act (XI of 2005)---***

*----S. 3---Criminal Procedure Code (V of 1898), S. 265-K---Constitution of Pakistan, Art. 199---Constitutional petition---Power of Court of Session under 5.265-K, Cr.P.C.---Scope--Complaint filed by complainant (petitioner) under S.3 of Illegal Dispossession Act, 2005---Accused filed application under S.265-K, Cr.P.C., seeking his acquittal---Court of Session dismissed complaint under Illegal Dispossession Act, 2005, while exercising powers under S.265-K, Cr.P.C.---Legality---Order of Court of Session by which it dismissed the complaint was illegal as the court did not have the power to do the same under S.265-K, Cr.P.C.---Order of Trial Court was set aside and case was remanded to Trial Court for decision afresh in accordance with the law---Constitutional petition was allowed, accordingly.*

***PLD 2008 Lah. 358; PLD 2008 Lah. 59 and 2010 PCr.LJ 422 ref.***

# 2012 P Cr. L J 1835

***[Peshawar]***

***Before Qaiser Rashid Khan, J***

**THE STATE**---*Petitioner versus* **AHMED BAKHSH** *and others*---*Respondents*

*Criminal Miscellaneous Nos.331 and 332 of 2011, decided on 22nd May, 2012.*

***(a) Criminal Procedure Code (V of 1898)---***

*----Ss. 561-A' & 417---Limitation Act (IX of 1908), Art.157---Recalling of order and restoration of appeal---Appeal against acquittal filed by the State---Inherent powers of High Court under S.561-A, Cr.P.C.---Scope---Limitation period for filing such appeal was determined in oblivision to the law---Petition under S.561 A, Ct.P.C.---Scope---State (petitioner) had filed appeal against acquittal of the accused persons before the High Court, but same was dismissed on the account that prescribed period for filing such an appeal was thirty (30) days, therefore, appeal in question was barred by twenty-nine (29) days---Validity---Article 157 of the Limitation Act, 1908, provided a period of six months for filing State appeal from the date of order of acquittal and not thirty days as held in the impugned order---Where the impugned order was prima facie, pasted either on account of lack of assistance rendered to the court or due to confusion or accidental slip, but for no fault on part of the petitioner, then S.561-A, Cr.P.C., must come to its rescue to secure the ends of justice--- Impugned order of the High Court was recalled, appeal against acquittal was restored to its original number and condonation of delay in filing appeal against acquittal was allowed to the petitioner in view of the peculiar circumstances of the case.*

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# 2012 P Cr. L J 1840

***[Lahore]***

***Before Muhammad Anwaarul Haq and Abdus Sattar Asghar, JJ***

**NIAZ AHMAD KHAN**---*Appellant versus KHALID PERVAIZ and another*---*Respondents*

*Criminal Appeal No.86 of 1996, heard on 21st June, 2012.*

***(a) Penal Code (XLV of 1860)---***

*----S. 302(b)/34---Criminal Procedure Code (V of 1898), S. 417(2-A)---Qatl-e-amd, common intention---* ***Appeal against acquittal****---Appreciation of evidence---Attribution against accused, who was allegedly armed with .12 bore gun, was that he fired a shot with said gun at the deceased, which hit him on the right side of the chest---Both, the complainant and other prosecution witness, had reiterated prosecution version with regard to culpability of accused---Testimonies of both said prosecution witnesses were consistent and in line to each other with regard to attribution against accused for causing the fire-arm injury on the right side of the chest of the deceased---Ocular account was also corroborated by the medical evidence produced by the prosecution---F.I. R. was promptly lodged and promptitude in lodging of the F.I.R. was always considered to having guarantee of truth to a great extent---Motive was not denied---Mere factum that the Police had failed to recover any weapon of offence from accused, was no reason to disbelieve the consistent, reliable and trustworthy ocular account produced by the eye-witnesses fully corroborated by medical evidence--Impugned judgment passed by the Trial Court with regard to acquittal of said accused was perverse, based on non-reading and*

*misreading of evidence, arbitrary, not sustainable in the eye of law and suffered from factual and legal infirmity, and was liable to set aside---Appeal against acquittal to the extent of said accused was allowed and impugned order of acquitted to his extent was set aside---In view of extenuating circumstances of the case, accused was sentenced to imprisonment for life as Tazir, in circumstances.*

***Ram Bali and others v. State AIR (38) 1952 Allahabad 289; Mushtaq Hussain and another v. The State 2011 SCMR 45 and Farman Ali and 2 others v. The State 1992 SCMR 2055 rel.***

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# 2012 P Cr. L J 1867

***[Peshawar]***

***Before Qaiser Rashid Khan, J***

**MUHAMMAD HANIF** *and 4 others---Petitioners versus THE STATE and 9 others---Respondents*

*Criminal Petition No.9 of 2012, decided on 20th February, 2012.*

***(a) Criminal Procedure Code (V of 1898)---***

*---Ss. 22-A & 561-A---Penal Code (XLV of 1860), Ss.458/380/506/ I48/149---Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint, theft in dwelling house etc., criminal intimidation, rioting armed with deadly weapons, unlawful assembly---Petition for quashment of F.I.R. and orders of Justice of Peace and Sessions Judge---Complainant (respondent) had filed an application under S.22-A, Cr.P.C., before the Justice of Peace for registration of case against the accused persons (petitioners), which application was accepted and F.I.R. was registered---Justice of Peace directed the police to arrest the accused persons and recover the stolen animals---Police Al not comply with the orders of the Justice of Peace and on different occasions recommended the cancellation of the case--Sessions Judge also issued several directions to the local police for compliance of court orders and held that in case of non-compliance, legal action would be taken against the police officials---Contentions of the accused persons were that a thorough probe was made by the police into the matter and conclusion was reached that no offence was committed by the accused persons, and that from the contents of the application under S.22-A, Cr.P.C., moved by the complainant, no offence was made out---Validity---Perusal of the record revealed that impugned orders of the Justice of Peace and Sessions Judge and the registration of the F.I.R. were the result of proper appraisal of evidence brought on the record---Police was initially , reluctant to register the case against the accused persons---Although the police had recommended the cancellation of the case, but the opinion of the police was not binding on the court---Police officials had been found to be openly flouting the various orders of the courts below---Available facts and circumstances of 'the case, prima facie, linked the accused persons with the commission of the offence---Petition was dismissed, in circumstances.*

***Abdul Qadoos and another v. Sarwar Khan and 2 others 2009 PCr.LJ 1106 ref.***

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# 2012 P Cr. L J 981

***[Peshawar]***

***Before Syed Sajjad Hassan Shah and Fazal-i-Haq Abbasi, JJ***

**MUHAMMAD AMEER KHAN**---*Petitioner Versus KHISRO PERVEZ and 2 others---Respondents*

*Writ Petition No.2297 of 2011, decided on 4th October, 2011.*

***(a) Criminal Procedure Code (V of 1898)---***

*----Ss. 22-A, 155 & 190---Penal Code (XLV of 1860), Ss.162/163/164---Constitution of Pakistan, Art 199---Constitutional petition---Quashing of F.I.R.---**Allegation against Circle Girdawar accepting money for the outcome of a case decided by Civil Judge**---Civil Judge had sent a complaint/allegation to District and Sessions Judge stating that accused (Girdawar) had made an allegation against her of accepting money to decide the outcome of a case---Sessions Judge/Justice of Peace treated the said complaint under S.22-A, Cr.P.C. and directed Station House Officer to register a case against the accused under Ss.162, 163 and 164, P.P.C.---Contention of accused was that offences were not cognizable, therefore, Justice of Peace had no powers to direct registration of case---Validity---Complaint/allegation sent by Civil Judge, appeared to have been sent under S.190, Cr.P.C. but Sessions Judge treated the same under S.22-A, Cr.P.C. and issued directions for registration of case---Charges against the accused were very serious in nature because he by his acts, omissions and commission not only obtained gratification in the name of a judicial officer but also tried to lower the institution of judiciary in the eyes of general public---High Court was not required to stifle the prosecution case at the initial stage, if prima facie an offence had been committed and ordinary course of trial should not be allowed to be deflected by resorting to constitutional jurisdiction of the High Court---Constitutional petition was dismissed, in circumstances.* ***PLD 2007 SC 539 and 2006 SCMR 276 rel.***

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# 2012 P Cr. L J 930

***[Federal Shariat Court]***

***Before Shahzado Shaikh, A.C.J., Allama Dr. Fida Muhammad Khan and Rizwan Ali Dodani, JJ***

**QAISAR MEHMOOD** *and another---Appellants versus THE STATE---Respondent*

*Jail Criminal Appeal No.282/I of 2004, Criminal Appeal No.342/L of 2004 and Criminal Murder Reference No.17/I of 2004, decided on 20th September, 2011.*

***(a) Penal Code (XLV of 1860)---***

*----Ss. 302(b) & 364-A---Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979), S.10(4)---Qatl-e-amd, kidnapping and abducting a person under the age of fourteen, zina bil-jabr liable to tazir---Appreciation of evidence---F.I.R. was lodged promptly, wherein the complainant had nominated both accused---Accused had made confession before prosecution witnesses regarding commission of rape with deceased and her murder---Such extra judicial confession though was a weak type of evidence, but it could be considered as a corroborative piece of evidence in the presence of other material evidence available on record in the shape of last seen evidence and medical evidence---Contention of counsel for accused that Investigating Officer had not fulfilled the requirements of S.103, Cr.P.C., and no independent witnesses were associated, was of no value because in such cases no other person except blood relations would step forward to discharge the duty of being a witness---Incident was an unseen occurrence, but the prosecution had proved its case through circumstantial evidence by producing last seen evidence, extra judicial confession, coupled with medical evidence in line with each other, and no link was missing in the chain---Recoveries effected on the disclosures of accused, also connected accused with the crime---No conflict was noticed between the medical evidence and the ocular account and same fully corroborated each other---No possibility existed for prosecution for false implication of accused persons and fabricating the case against accused persons---Contradictions pointed out by the*

*counsel for accused persons were generally trivial and technical---Witnesses were cross-examined at length, but their veracity could not be shattered---Counsel for accused had not been able to create any dent in the prosecution evidence---Mens rea was quite apparent in behaviour of the accused, which became manifest in actus reus or actual commission of acts of their evidence---Last seen occasion and plea of the victim, recovery of the dead body of the deceased, the manner in which it was recovered, proved that the offence was committed in the adjacent place---Report of Chemical Examiner was positive, which stated that the swabs were stained with semen---Lady Doctor also opined that deceased was subjected to sexual intercourse---Case having fully been proved against accused persons, appeals filed by accused against their conviction and sentence, were dismissed, in circumstances.*

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# 2012 P Cr. L J 975

***[Sindh]***

***Before Shahid Anwar Bajwa, J***

**ABDUL GHANI** *alias GHANI---Applicant Versus THE STATE---Respondent*

*Criminal Bail Application No.909 and M.A. No. 4799 of 2011, decided on 20th February, 2012.*

***(a) Criminal Procedure Code (V of 1898)---***

*----S. 497---Penal Code (XLV of 1860), Ss. 302, 324, 458, 337-A(i), 337-F(i)---Qatl-e-amd, attempt to commit qatl-e-amd, house trespass by night after preparation for hurt, assault or wrongful restraint, shajjah-i-khafifah, ghayr-i-jaifah damiyah---Bail, refusal of---Dispute over refusal to give daughter's hand in marriage---Husband of deceased refused to give hand of his daughter in marriage to the minor son of the accused---Accused along with his co-accused committed the murder of the deceased to show his contempt over such refusal---Although both* ***the eye-witnesses*** *of the incident had submitted* ***sworn affidavits*** *stating that they were not present at the place of occurrence, but much value could not to be assigned to such affidavits---Behavior of accused did not entitle him to concession of bail---Bail application of accused was dismissed.* ***Muhammad Najeeb v. The State 2009 SCMR 448; Muhammad Nawaz alias Najja v. The State 1991 SCMR 111 and Muhammad Soomar and another v. The State 2011 PCr.LJ 1740 distinguished. Naseer Ahmed v. The State PLD 1997 SC 347 fol.***

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# 2012 P Cr. L J 1053

***[Balochistan]***

***Before Jamal Khan Mandokhail, J***

**KALA KHAN**---*Petitioner Versus THE STATE---Respondent*

*Criminal Miscellaneous Quashment No.97 of 2011, decided on 26th December, 2011.*

***Criminal Procedure Code (V of 1898)---***

***----S. 386---Penal Code (XLV of 1860), S. 409---Prevention of Corruption Act (II of 1947), S. 5(2)---****Criminal breach of trust by public servant, criminal misconduct--- Warrant for levy of fine---Scope---Clarification of judgment---High Court while hearing appeal of accused maintained his conviction and reduced his sentence to that already undergone by him with the order that the amount of fine shall be recovered from the accused from his property---Accused requested clarification of such order with the contention that although accused was ordered to pay fine, but in*

*default of payment of the fine, the order was silent, and that it was ordered that amount of fine shall be recovered from the properties of the accused, but accused did not have any property---Validity---High Court had given no direction for detention of the accused in default of payment of fine and it h1ad been specifically mentioned that the amount of fine shall be recoverable from the movable or immovable properties, or both, of the accused---Section 386, Cr.P.C. suggested that in case of default in the payment of fine, the amount could be recovered either by the attachment and sale of any property of the convict or the amount could be realized by the execution in accordance with the provisions of the Civil Procedure Code, 1908, and executing Court could issue warrants to the District Officer (Revenue), authorizing him to realize the amount by the execution according to the civil process against the movable or immovable properties, or both, of the offender---Proviso to S.386, Cr.P.C. clearly stated that in case, offender had undergone the whole of the sentence or there was no order for imprisonment in default of payment of fine, no court shall issue warrant of arrest of offender---High Court had reduced the sentence awarded to the accused by the Trial Court to that already undergone by him, however the amount of fine was ordered to be recovered from the movable or immovable properties of the accused and there was no order for imprisonment in default of payment of the fine, which meant that the fine was still recoverable, but without the detention of the accused in prison---If the accused did not own any property, the amount of fine would remain due against him, which could be recovered whenever he acquired a property in the future---Appeal of accused was dismissed, with such clarification.*

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