

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

BEFORE:-

1. Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
2. Mr. Justice Raja Jalal-ud-Din, Judge.
3. Mr. Justice Muzaffar Ali, Judge.

Cr. PLA No.06/2015.

1. DSP Babar Khan now SP Resident of Sultabad Hunza.
2. Khan Azam Son of Ali Yar Khan Alias Gullo R/o Aliabad Hunza.

PETITIONERS/RESPONDENTS.

VERSUS

1. Sher Suleiman Son of Shair Ullah Baig R/o Aminabad Shishkat Hunza District.

RESPONDENT/COMPLAINANT.

**OFFENCES UNDER SECTIONS 302/34, 324 PPC AND
6/7 OF ANTI TERRORISM ACT, 1997.**

**PRIVATE COMPLAINT UNDER SECTION 200-204 CR.
PC AGAINST THE PETITIONERS.**

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN EMPOWERMENT AND SELF GOVERNANCE ORDER 2009 AGAINST THE IMPUGNED JUDGMENT/ORDER DATED 15-10-2014 OF HONORABLE CHIEF COURT WHEREBY THE LEARNED CHIEF COURT HAS ACCEPTED REVISION PETITION OF RESPONDENTS BY CONVERTING REVISION PETITION INTO AN APPEAL AND BY SETTING ASIDE, THE IMPUGNED ORDER DATED 02.08.2011 OF ANTI-TERRORISM COURT WITH THE OBSERVATION THAT SECTION 6 OF ATA DOES NOT ATTRACT IN THIS MATTER WITH DIRECTION TO THE SPECIAL JUDGE ATC TO TRANSFER THE COMPLAINT TO LEARNED ADDITIONAL SESSION JUDGE HUNZA/NAGAR FOR DISPOSAL.

FOR SETTING ASIDE THE IMPUGNED JUDGMENT/ORDER DATED 15.10.2014 OF LEARNED CHIEF COURT GILGIT-BALTISTAN /ORDER OF THE LEARNED SPECIAL JUDGE ATC MAY GRACIOUSLY BE UPHELD TO MEET THE ENDS OF JUSTICE.

PRESENT:-

1. Mr. Amjad Hussain Advocate, on behalf of the Petitioners.
2. Malik Haq Nawaz, Senior Advocate for the Respondent.

DATE OF HEARING: - 22-09-2015.

JUDGEMENT.

Dr. Rana Muhammad Shamim, CJ...The learned counsel for the petitioners contended that on 11.08.2012, the petitioners alongwith the then Chief Minister, Gilgit-Baltistan, were on their way

to visit Hunza but the effectees of Atta-abad lake blocked the road at Aliabad Hunza in order to protest for not receiving the amount on account of assistance package announced by the Government for the effectees of Attabad disaster. He further submitted that the petitioners being police personnel were deployed thereto on account of escort to the then Chief Minister, Gilgit-Baltistan. The Assistant Commissioner, alongwith Tehsildar Hunza requested the mob/rioters to give passage to the Chief Minister, who turned down their request. The petitioner No.01 alongwith his gunman namely Khan Azam petitioner No.02 also went to the mob/rioters and requested them to clear the road but unfortunately, the rioters instead of giving passage started throwing stones upon the petitioners and other police persons, resultantly, the petitioner got injures on his head and remained admitted in District Head Quarter Hospital with effect from 12.11.2012 to 26.11.2012. The mob/rioters did attack on Aliabad Police Station as well, took the ammunicions/weapons with them and burnt out the police Station. In result of the said clash two persons namely Sher Afzal S/o Sher ullah Baig and Sher ullah Baig were killed in the said incident. Subsequently, FIR No. 23/2013, under Section 302/324 PPC read with Section 6/7 of Anti-Terrorism Act, 1997, was lodged against the petitioners. After conducting investigation the respondents failed to substantiate the version given in the said FIR, consequently, the FIR was discharged by the Police. The learned counsel for the petitioners further contended that the respondents feeling aggrieved by and dissatisfied with the order of the local police filed a private complaint against the petitioners in the Court of Special Judge, Anti-Terrorism No.II under Sections No. 302/34/324 PPC read with 6/7, Anti-

Terrorism Act, 1997. The learned Special Judge, Anti-Terrorism Court No.II, after adjudicating the case passed order dated 02.08.2012 in Cr. Misc No. 20/2012, and dismissed the private complaint of the respondents on the two scores i.e.

- (1). *It is not supported by sanction as required by Section 132 Cr.PC.*
- (II). *It does not fall within the four corners of Section 6 of Anti-Terrorism Act, which could bring it within the domain of the Anti-Terrorism Court.*

The learned Counsel for the petitioners further contended that the present respondent feeling aggrieved by and dissatisfied with the order of the learned Special Judge, Anti-Terrorism Court No.II filed Cr. Revision No. 09/2012, before the learned Chief Court Gilgit-Baltistan with the prayer that the order dated 02.08.2012, passed by the learned Special Judge, Anti-Terrorism Court NO.II may be set aside. Upon hearing the said criminal revision, the learned Chief Court, Gilgit-Baltistan vide its order dated 15.10.2014, partially allowed the revision petition. Consequently, the order dated 02.08.2012, passed by the learned Special Judge, Anti-Terrorism Court No.II was set aside and the private complaint was transferred to the learned Additional Sessions Judge, Hunza/Nagar for disposal of the same under ordinary jurisdiction in accordance with law. The learned counsel for the respondent while saying so submitted that the learned trial Court took cognizance and examined the complainant and eye witnesses under Section 200 Cr.PC upon oath and other witnesses produced by the complainant but the learned trial Court instead of proceeding further with the case dismissed the private complain of the complainant which is not tenable in law.

The learned counsel for the petitioners lastly contended that the Judgment dated 15.10.2014, passed by the learned Chief Court Gilgit-Baltistan in Criminal Revision No. 09/2012, was passed without any cogent reasons, therefore, the same requires to be set-aside.

On the other hand, the learned counsel for the respondent submitted that order dated 02.08.2012, passed by the learned Special Judge, Anti-Terrorism Court NO. II, Gilgit-Baltistan in Cr. Misc No. 20/2012, was the result of misconception of law and facts. He further argued that due to firing of the petitioners precious lives of two (02) innocent persons have been taken away but the learned trial Court instead of granting justice to the legal heirs of the deceased taking support from the provisions of Section 132 Cr.PC, which was not only misconception of the law and facts but it is also a misreading and misinterpretation of law. Upon hearing, the learned Chief Court, Gilgit-Baltistan vide its order dated 15.10.2012, in Cr.Rev. No. 09/2012, rightly reversed the order of the learned Trial Court as it was not maintainable in law. He further contended that the Judgment dated 15.10.2012, passed by the learned Chief Court, Gilgit-Baltistan is based on facts and law, therefore, the same is required to be maintained. The learned counsel for the respondent also contended that the requirement of the sanction for prosecution is no more there as the apex Court of Pakistan has struck off the provision of Section 197 Cr.PC from the statute. He further contended that the petitioners opened fire on the peaceful protestors, which created a sense of fear and insecurity in the general Public as well. He also submitted that though the Hon'ble Supreme Court of Pakistan

has struck down Section 197 Cr.PC in respect of sanction for prosecution of Public servants, similarly, Section 132 Cr.PC would not protect any Government official from initiating prosecution against them. Both the Section i.e. Section 197 & 132 Cr.PC, are reproduced as under:-

“132. PROTECTION AGAINST PROSECUTION FOR ACTS DONE UNDER THIS CHAPTER. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Provincial Government: and:

- (a) No police officer acting under this Chapter in good faith.**
- (b) No officer acting under Section 131 in good faith.**
- (c) No person doing any act in good faith, in compliance with a requisition under section 128 or Section 130 (or S.131-A) and**
- (d) No inferior officer, or soldier, sailor or airman in the armed forces..... doing any act in obedience to any order which he was bound to obey. Shall be deemed to have thereby committed an offence:**

Provided that no such prosecution shall be instituted in any Criminal Court again any officer or soldier, sailor or airman in the armed forces except with the sanction of the Central Government.

197. Prosecution of Judges and public Servants. (1) When any person who is a judge within the meaning of Section 19 of the Pakistan Penal Code or when any Magistrate , or when any public servant who is not removable from his office save by or with the sanction of the Central Government or a Provincial Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty , no Court shall take cognizance of such offence except with the previous sanction.

- (a) In the case of a person employed in connection with the affairs of the Federation of the President; and**
- (b) In the case of a person employed in connection with the affairs of a Province, of Governor of that Province.**

(2) POWER OF PRESIDENT OF GOVERNOR AS TO PROSECUTION. *The President or Governor, as the case may be, may determine the person by whom, the manner in which the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held*”.

The learned counsel for the respondent in support of his contentions relied upon the case **(1)**. Federation of Pakistan Versus Zafar Awan Advocate reported in PLD 1992, SC 72 (Larger Bench) **(2)**. Muhammad Akram Versus the State and others, P.Cr. LJ, 1999, Karachi 1725, and **(3)**. Nausher Ali Versus Muhammad Ahmed & others, PLD 2013, Lahore, 61.

In case of “**Federation of Pakistan through Secretary Versus Zafar Awan Advocate etc**”, supra, the Shariat Appellate Larger Bench of the Hon’ble Supreme Court of Pakistan has held that the provisions of sanction of the President, the Governor of a Province or any other executive authority as mentioned in S.197 Cr.PC and S.6 (5), Criminal Law Amendment Act, 1958, being repugnant to Injunctions of Islam, Shariat Appellate Bench of the Hon’ble Supreme Court directed the President of Pakistan to take steps so that said provisions were suitably amended till 30th June, 1992, failing which these provisions of law would cease to have effect.

The provisions of S.197, Cr.PC and S.6 (5), Pakistan Criminal Law Amendment Act, 1958 act as clog or impediment for an aggrieved party against a State functionary to seek redress in a Court of law. In the matter of granting the permission or not granting it, the law provides no guidance nor is the aggrieved party even to be informed of the grant or refusal of such a sanction. As the provision

stands, it on the one hand, amount to stifling the prosecution of a genuine grievance and on the other hand protects absolutely the functionary, who commits the wrong or affords the grievance, the remedy cannot be denied to one having a legal right nor can the examination of the grievance be shut out at the absolute discretion of the competent authority. Hence, these provisions, as they stand, are clearly violative of the Injunctions of Islam, which make all public power a trust and hence all persons exercising it accountable to the persons suffering at its hands, and this process of independent and regulated by properly set out guidelines for the prosecution and adjudication of causes.

In case “***Muhammad Akram versus the State & others***”, Supra, the learned High Court of Sind was pleased to observe that where statements of the complainant and his witnesses had revealed that a prima facie case against private respondents/accused was made out for the purpose of further proceedings in this matter, but trial Court dismissed Private Complaint filed by complainant without affording opportunity to complainant to prove his case, had decided matter in a manner as if a final adjudication was being made. High Court accepting revision set aside order of the trial Court and remanded case to same Court for further proceedings. Due to his illegality committed by the trial Court the complainant was deprived of a full opportunity contained in his complaint.

In case “**Nausher Ali Versus Muhammad Ahmed and others**”. The Lahore High Court Lahore had held that where a persons was dissatisfied with the findings of the Police in respect of the allegations levelled in his crime report, while the Private Complaint

lodged by him would be put to trial first, while the proceedings in the challan case would be stopped till the decision of the complaint case--
----such preference would be given/provided the complainant had filed the complaint against the same set of accused with the same allegation as mentioned by him in the FIR .

We have heard both the learned counsel for the respective parties at length, perused the record of case file and gone through the impugned judgments of the Courts below. We have also gone through the judgments relied upon by the learned counsel for the respondent. In our considered view, the judgments referred by the learned counsel for the respondent are applicable, which support his contentions. The impugned judgment dated 15.10.2012, in Criminal Revision No. 09/2012, passed by the learned Chief Court, Gilgit-Baltistan is well reasoned and well founded as no infirmity and illegality has been pointed out by the learned counsel for the petitioners and the same is upheld.

In view of the above, the petition is converted into an appeal and dismissed being meritless. These are the reasons for the short order dated **22.09.2015**. The petitioners, however, will be at liberty to seek legal remedies during trial by moving application under Section 265-K Cr.PC for their acquittal, if no material evidence is produced by the complainant if they so advised.

Announced on: - 08.10.2015.

Chief Judge.

Judge.

Judge.

Whether the case is Fit to be reported or Not?