

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

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

1. Cr. Appeal No. 25/2017

In

Cr. PLA No. 20/ 2017

Qareebullah son of Said Hussain Shah

Petitioner.

Versus

Federation of Pakistan & 02 others

Respondents.

2. Cr. Appeal No. 26/2017

In

Cr. PLA No. 21/ 2017.

Irfanullah Alias Umer son of Khuda Yar

Petitioner.

Versus

Federation of Pakistan & 02 others

Respondents.

3. Cr. Appeal No. 27/2017

In

Cr. PLA No. 22/ 2017.

Molvi Dilbar son of Kashkhar & 03 others

Petitioners.

Versus

Federation of Pakistan & 02 others

Respondents.

PRESENT:-

1. Mr. Amjad Hussain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners in all 03 Appeals.
2. The Deputy Attorney General for Pakistan at Gilgit for the Federation of Pakistan in all 03 Appeals.
3. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General for the Provincial Government of Gilgit-Baltistan in all 03 Appeals.

DATE OF HEARING: - 08.09.2017.

DATE OF ANNOUNCEMENT OF JUDGMENT: - 20.10.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... All the three petitions have arisen out of the common impugned judgment dated 21.12.2016 in Writ Petitions Nos. 209,210, 211 and 212/2016 passed by the learned Chief Court whereby the said Writ Petitions

filed by the petitioners were dismissed in limini being meritless. The petitioners being aggrieved by and dissatisfied with the said impugned judgment filed these petitions for leave to appeal. This court vide order dated 09.05.2017 issued notices to the respondents and the cases were heard on 08.09.2017.

2. Briefly, the facts of the case are that the petitioners were booked in Case FIR No. 20/2013 dated 23.06.2013 and FIR No. 55/2013 dated 06.08.2013 registered at Police Station Chilas District Diamer. After investigation the challan of the case was submitted in the learned trial Court i.e. the Anti-Terrorism Court Gilgit-Baltistan. Whereafter on 12.02.2016, the case was shifted/transferred to a Military Court (Field General Court Martial (FGCM) at Gilgit. Consequently, the petitioners were tried by a Field General Court Martial (FGCM) held at Gilgit. The Military Court convicted/sentenced the petitioners and they all were awarded death sentence except petitioner namely Habib-ur-Rehman, who was awarded 10 years Rigorous Imprisonment. The judgment of the Military Court was announced on 12.02.2016. The petitioners being aggrieved by and dissatisfied with the said order filed appeal before the Military Court of Appeal which upon hearing was also dismissed vide order 26.07.2016. Whereafter the petitioners invoked the jurisdiction of the learned Lahore High Court Rawalpindi Bench by filing Writ Petition No. 2551 /2016 which was dismissed on 22.11. 2016 for want of jurisdiction. The petitioners again filed Writ Petitions in the learned Chief Court Gilgit-Baltistan

contending therein that the petition may be declared maintainable in terms of the law laid down by the Hon'ble Supreme Court of Pakistan in various cases relating to arm forces and Military Courts. The learned Chief Court upon hearing dismissed the Writ Petitions of the petitioners in limini declaring the same as meritless.

3. Mr. Amjad Hussain learned counsel appearing on behalf of the petitioners submits that the petitioners were convicted and sentenced by the Field General Court Martial (FGCM) without hearing the petitioners and supplying any documents of the case which is against the administration of criminal justice system. He also submits that the petitioners were convicted in violation of Pakistan Army Act, (Amended Act) 2015, hence, the trial was illegal and without lawful authority. Per learned counsel, the learned Chief Court dismissed the Writ petitions of the petitioners on the basis of one case reported as 2015 PLD SC 369 cited by the prosecution whereas the case laws relied upon by the petitioners have been ignored despite the same were applicable. He submits that the learned Chief Court did not consider the legality of the de-novo trial by the Military Court which is against the law. The learned Chief Court failed to apply its judicial mind to appreciate the merit of the case and authority of the functionaries while transferring the case to the Military Court with special reference to the constitutional and legal status of Gilgit-Baltistan & application of federal laws in this region for trying the case under Pakistan Army Act. He submits that the learned Chief Court fell in error while exercising its jurisdiction

under Article 71 of Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009, hence, the impugned judgment is not tenable in law. He prays that the said impugned judgment may graciously be set aside. While saying so he relied upon the case laws reported as 2015 PLD SC 401, 1975 PLD SC 506, 1996 PLD SC 632, 2007 PLD SC 498, 2012 SCMR 1229, 2013 PLJ SC 876, 2013 SCMR 596, 2009 PLD SC 866 and 2014 SCMR 1530.

4. On the other hand, the learned Deputy Attorney General for Pakistan at Gilgit and the learned Advocate General Gilgit-Baltistan support the impugned judgment. They contend that the Military Courts have been established through 21st Amendment Act, 2015 and the Pakistan Army Act, Amendment 2015 to eradicate the terrorism and to protect the integrity and security of the country. Per learned counsels, the trial of the hard core terrorists/criminals is not an encroachment of the fundamental rights of the petitioners/convict. They further contend that the learned Chief Court has rightly dismissed the Writ petition of the petitioners while passing the impugned judgment. They pray that the said impugned judgment may pleased be maintained. In support of their contentions they cited the case law reported as 2015 PLD SC 369.

5. We have heard the learned counsel for the respective parties at length, perused the material on record and gone through the impugned judgment passed by the learned Chief Court. We have also gone through the case laws referred by both the learned counsels for the respective parties. The case laws relied upon by the

learned counsel for the petitioners are distinguishable whereas the case law cited by the learned Deputy Attorney General for Pakistan at Gilgit and the learned Advocate General Gilgit-Baltistan is applicable. The learned counsel for the petitioners also could not point out any infirmity or illegality in the said impugned judgment. In our considered view, the impugned judgment passed by the learned Chief Court is well reasoned and well founded, therefore, no interference is warranted into it.

6. In view of the above discussions, we convert these petitions into appeals and the same are dismissed. Consequently, the common impugned judgment dated 21.12.2016 in Writ Petitions Nos. 209,210, 211 and 212/2016 passed by the learned Chief Court is affirmed.

7. The appeals are dismissed in above terms.

Chief Judge.

Judge.