Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Case No. Intra Court Appeal No.28717/2023

Nauman Anjum **Versus** *Area Magistrate, etc.*

Sr. No. of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
	04.05.2023	Mr. Azhar Iqbal, Advocate for the appellant. Malik Sarood Ahmad, A.A.G. on Court's call. Appellant has directed this Intra Court Appeal under Section 3 of Law Reforms Ordinance, 1972 (Ordinance) against the order of learned Single Judge in Chamber dated 18.04.2023, whereby his Writ Petition No.26551/2023 seeking annulment of order of Area Magistrate, Daska dated 18.04.2023 was dismissed. 2. Precisely, the facts of the case are that the appellant, being accused in case FIR No.398/23 dated 26.03.2023, in respect of offence under Section 337-A(i), 337-A(iii), 337-F(i), 337-L(ii), 342, 148 & 149 PPC registered at Police Station, Motra District Sialkot filed an application for constitution of District Standing Medical Board before the Area Magistrate, Daska for re-examination of injured Muhammad Shoaib and Shoaib Ali sons of Ghulam Hussain, which was dismissed by the said Court vide order dated 11.04.2023. Legality of said order was questioned by the appellant by filing Writ Petition No.26551/2023 before this Court, which was dismissed by the learned Single Judge in Chamber

vide impugned order dated 18.04.2023. Hence, this appeal.

3. At the very outset, in response to our query, qua maintainability of instant Intra Court Appeal, learned counsel while referring to reported judgment of Division Bench of this Court titled "*Ahmad Khan ..Vs.. Addl. Sessions Judge, Talagang and 4 others (PLD 2020 Lahore 77)*", submits that the impugned order of Area Magistrate was an administrative order, which was not amenable to the Revisional jurisdiction, as such an aggrieved party has to question its validity in writ petition directly, against which Intra Court Appeal is proceedable. On the contrary, learned Law Officer while referring to proviso to subsection (2) of Section 3 of the Ordinance, submits that this appeal is not maintainable.

4. Heard. In order to resolve controversy, proviso to subsection (2) of Section 3 of the Ordinance is of pivotal importance, which reads as under:-

> "Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article 199 arises out of any proceedings in which the law applicable provided for at least one appeal [or one revision or one review] to any court, tribunal or authority against the original order."

Bare reading of the aforesaid proviso makes it abundantly clear that an appeal under Section 3 is not competent before the Division Bench of this Court, against the order of learned Single Judge passed in a writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, arises out of the proceedings, which at least provided one appeal, one revision or review to any

Court, Tribunal or authority against the "original order". The word "original order" contained in the above proviso has been interpreted by the Apex Court in case reported as "*Muhammad Aslam Sukhera and others ..Vs.. Collector Land Acquisition, Lahore, Improvement Trust, Lahore and another* ***(PLD 2005 SC 45)***", wherein it has been laid down as under:-

> "The word "original" is susceptible to different meanings in the context of a particular statute. It does not always mean "first in order". The expression "original order" in section 3(2) of the Ordinance was used in generic sense in contradistinction to orders passed in appeal, revision or review. In Macmilan and Company Limited versus K. and J. Cooper (AIR 1924 Privy Counsel 75), a case from Bombay jurisdiction, the Privy Council had the occasion to interpret the word "original" in the context of Copyright Act, 1911, as follows:---
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> "The word "original" does not mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the opinion of ideas, but with the expression of thoughts; and in the case of "literary work" with the expression of thought in print or writing. The originality which is required relates to the expression of the thought; but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work-that it should originate from the author."
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> "The mere process of selecting passages from works readily accessible to the public is not, but difficulty in obtaining access to 'the originals or skill manifested in making or arranging the selection is sufficient to give the character of an "original literary work" to the selection."
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> In Re Oriental Bank (54 L.J.Ch.481) it was held on the construction of, a clause in the Charter of that Bank that the words "original-holder" of shares did not mean the first allottee, but meant the immediate transferor to the person holding the shares at the time when the phrase became operative i.e. in that case, the winding-up of the company."

We can, therefore, easily concluded that in order to maintain Intra Court Appeal before the Division Bench of this Court, the test is as to whether the "original order" passed in the proceedings,

provided an appeal, revision or review to an aggrieved person and not the one which was subject matter of writ petition. Reliance in this regard is placed on case reported as "*Mst. Karim Bibi and others vs. Hussain Bakhsh and another* **(PLD 1984 SC 344)**, wherein it has been laid down as under:-

> "After giving our anxious consideration to the arguments urged in support of this appeal, we are, however, not impressed by any of the contentions raised. The test laid down by the Legislature in the proviso is that if the law applicable to the proceedings from the Constitutional Petition arises provides for at least one appeal against the original order, then no appeal would be competent from the order of a Single Judge in the constitutional jurisdiction to a Bench of two or more Judges of the High Court. The crucial words are the "original order". It is clear from the wording of the proviso that the requirement of the availability of an appeal in the law applicable is not in relation to the impugned order in the Constitutional Petition, which may be the order passed by the lowest officer or authority in the hierarchy or an order passed by higher authorities in appeal, revision or review, if any, provided in the relevant statute. Therefore, the relevant order may not necessarily be the one which is under challenged but the test is whether the original order passed in the proceedings subject to an appeal under the relevant law, irrespective of the fact whether the remedy of appeal, so provided was availed of or not. Apparently the meaning of the expression "original order" is the order with which the proceedings under the relevant statute commenced. The word "proceedings" has been used in different enactments and has been subject to judicial interpretation in a number of cases wherein it has received either restricted or wide meaning according to the text and subject-matter or the particular statute."

It was further laid down in the above judgment that:-

> "The obvious intention underlying the provision was to abolish Intra-Court Appeal in cases in which the impugned order in the Constitutional order arises out of the proceedings in which the original order was appealable. Necessarily therefore, the question whether the original order was appealable or not will be determinable with reference to the

> law that was applicable on the date of such original order and not the date when the matter came up before the High Court in Constitutional jurisdiction. Similarly, we are unable to see any force in the contention that the word "proceedings" should be given restricted meaning so as to confine it to the proceedings before the authority which passed the order under challenge in the Constitutional Petition which in the present case was *suo motu* proceedings commenced by the Settlement Commissioner. By no stretch can the order passed in revision be construed as the original order as contemplated by the proviso under consideration.''

Similar view has been reiterated by the Apex Court in case reported as "*SME Bank Limited through President Islamabad and others ..Vs.. Izhar ul Haq* **(2019 SCMR 939)**", wherein it has been laid down as under:-

> "It is admitted fact that disciplinary proceedings were conducted against the respondent under the Regulations stated above, which ultimately resulted into imposition of penalty vide Office Order dated 02.06.2003, against which under the said Regulations, which are stated by the respondent to be statutory, the remedy of appeal and review is provided. We are of the view that where the proceedings from which the writ petition has arisen provided for either review, revision or appeal, in terms of proviso to section 3 of the Ordinance of 1972, remedy of ICA will not be available against the judgment passed by the learned Single Judge ion the writ petition."

In case reported as "*Shafqat Ali ..Vs.. Chairman, Pakistan Electronic Media Regulatory Authority, PEMRA and 5 others* **(2022 CLC 1473)**", a Division Bench of this Court held as under:-

> " The reference is clearly to the proceedings taken under any statute which prescribes a hierarchy of officers or authorities for carrying into effect the purposes of such statute including the enforcement of rights, if any, created thereunder. In such a case the law clearly envisages an original order against which the remedy of Appeal was provided by the statute.

9. Therefore, it is clear from the wording of the proviso that the requirement of the availability of an appeal in the law applicable is not in relation to the impugned order only in the Constitutional Petition. Apparently the meaning of the expression original order is the order with which the proceedings under the relevant statute commenced. A proceeding would include every step taken towards a further progress of a cause in Court. The proceedings commences with the first step by which the machinery of law is put into motion."

5. Here in the instant case, subject matter in the writ petition before the learned Single Judge in Chamber was the findings of First Medical Examiner. Now we have to examine, as to whether against such findings/proceedings, any remedy of appeal, revision or review before any authority was provided to an aggrieved person or not. In this regard, Gazette Notification No.SO (H & D)5-5/2002 dated 05.02.2003 of the Government of Punjab is of much significance, which provided a three tier procedure for conducting medico legal work. For ready reference said notification is reproduced as under:-

Gazette of Punjab,Part I,
5th February, 2003

No. SO (H&D) 5-5/2002, dated 05.02.2003.--- Pursuant to the orders of the Governor following amendments in procedure are hereby ordered for revamping of medico legal work in Punjab with immediate effect.

1. A "Three Tier Structure for the conduction of medico legal work has been established.

(a). FIRST TIER

The Initial Medicolegal examination shall be carried out by the Medical Officers/Women Medical Officers at the Rural Health Centers, Tehsil Headquarters Hospitals, District Headquarters Hospitals and at Teaching Hospitals.

(b). SECOND TIER

> The District Standing Medical Boards, comprising the following, shall act as First Appellate Authority in all the 34 Districts of Punjab:
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> |---|---|
> | Medical Superintendent, DHQ Hospital | Chairman |
> | District Officer Health | Member |
> | Surgeon | Member |
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> **These Boards will conduct re-examination if the decision of the first medico legal examiner is challenged and also for examination of alleged cases of police torture.** For District Lahore District Standing Medical Board will be established at Government Mian Muhammad Munshi, DHQ, Hospital.
>
> **(C) THIRD TIER**
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> The role of Surgeon medico legal, the Punjab shall only be Appellate and Supervisory. He shall be the Chairman of Provincial Standing Medical Board, which shall be the final Appellate Authority against the decisions of District Standing Medical Boards. Other members of the Provincial Standing Medical Board (PSMB) will be the Associate/Assistant Professor Forensic Medicine of the Regional Medical College and the Medical Superintendent of one of the attached Teaching Hospital. The Board can co-opt any other member when required."

From the above notification, it is manifestly clear that opinion of First Medical Examiner, can be challenged in appeal by an aggrieved person before the District Standing Medical Board and second appeal lies before the Provincial Standing Medical Board in Appellate/Supervisory capacity. This "Three Tier Structure" for conduction of medico legal work has been recognized by the apex Court in case reported as "*Mst. Lubna Bibi ..Vs.. Azhar Javed Abbas and another (2022 SCMR 946)*".

6. For what has been discussed above, we have no doubt in our mind that against the "original order" i.e. opinion of Initial Medical Examiner, two tier remedy of appeal i.e. before District Standing Medical Board and Provincial Standing Medical Board was available to the appellant,

therefore, irrespective of the fact that what was impugned/challenged in the writ petition, instant Intra Court Appeal is not maintainable, which stands ***dismissed in-limine***.

(Ali Baqar Najafi)
Judge

(Asjad Javaid Ghural)
Judge

Approved for Reporting

Judge

Azam*