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JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

Criminal Revision No.340 of 2013.

Iftikhar Ahmad. versus The State, etc.

JUDGMENT

DATE OF HEARING:	*10.05.2023*
PETITIONER BY:	*Mr. Zubair Khalid Chaudhry, Advocate.*
STATE BY :	*Ms. Noshe Malik, DPG.*
COMPLAINANT BY:	*Nemo.*

MUHAMMAD AMJAD RAFIQ, J:- Petitioner Iftikhar Ahmad was tried by the learned Magistrate Section-30, Nankana Sahib in case FIR No.265/2010 dated 02.05.2010 under sections 324, 337-F(v), 334, 34 PPC Police Station City Shahkot District Nankana Sahib and vide judgment dated 26.09.2012, the learned Magistrate convicted and sentenced the petitioner as under:-

i) **Under section 324 PPC**: Rigorous imprisonment for seven years.

ii) **Under section 337-F(v) PPC**: Rigorous imprisonment for four years along with payment of '*Daman'* Rs.1,00,000/- to injured Ghulam Farid.

iii) **Under section 334 PPC**: Rigorous imprisonment for seven years along with payment of '*Arsh'* Rs.5,47,408/- to injured Muhammad Arshad.

iv) **Under section 155-C of Police Order, 2002**: Rigorous imprisonment for six months and fine Rs.1,000/-; in default whereof, to undergo further ten days simple imprisonment.

All the sentences were ordered to run concurrently and benefit of section 382-B of Cr.PC was extended to the petitioner. Against the said conviction and sentence, the petitioner filed appeal which was dismissed by the learned appellate court vide judgment dated 22.03.2013. Being

aggrieved with the impugned judgments, petitioner has preferred instant revision petition.

2. Brief facts of the case are that on 02.5.2010 the complainant along with his two sons namely Ghulam Shabbir and Ghulam Farid accompanied by Muhammad Anwar and Muhammad Arshad sons of Bashir on their way to village while riding on two motorcycles No.8400/HDF 125-CC and 7817/FS when reached at Shahkot Jaranwala Road near Madni Mohallah, there Irshad alias Taidi armed with 12-bore repeater and Zulfiqar Ali armed with pistol were standing on motorcycle who while calling Ghulam Farid and Muhammad Arshad stopped them; in the meanwhile, a police van came from front wherefrom, Iftikhar constable (convict) deboarded with his official Kalashnikov and he along with his brothers Zulfiqar and Irshad started indiscriminate firing in order to murder Ghulam Farid and Muhammad Arshad who sustained injuries.

Motive behind the occurrence was the registration of an FIR by the complainant against accused Iftikhar etc. for committing fraud of tractor.

3. After observing all codal formalities, report under section 173 of Cr.PC was submitted before the learned trial Court. Charge was framed against the accused to which he pleaded not guilty and claimed to be tried.

4. At the trial, prosecution examined Abdul Qadeer complainant (PW.1), Muhammad Arshad injured witness (PW.2), other injured witness namely Ghulam Farid (PW.3), Rafaqat Ali ASI (PW.4), Abdul Khaliq SI (PW.5), Muhammad Ilyas 186/C (PW.6), Dr. Muhammad Ashraf (PW.7) and Zaheer-ud-Din ASI (PW.8). On close of prosecution evidence, statement of accused under section 342 Cr.PC was recorded wherein he denied the prosecution version, however, did not opt to produce defence evidence nor to record his own statement under section 340(2) Cr.PC.

5. Though a report of Superintendent District Jail Sheikhupura is available on file, according to which the petitioner has been released from jail on 07.06.2016 after expiry of sentence and payment of Arsh as

well as Daman amount imposed upon him, however, learned counsel for the petitioner urges decision of the case on merits while raising various grounds including that occurrence was result of grappling and fires hit by mistake.

6. Arguments heard. Record perused.

7. Occurrence was of 02.05.2010 at 10:00 p.m. (night), wherein, as a result of indiscriminate firing made by the petitioner and his two brothers namely Zulfiqar Ali and Irshad alias Taidi, two persons namely Ghulam Farid and Muhammad Arshad received injuries which resulted into amputation of leg of Muhammad Arshad and fracture of leg of Ghulam Farid. Prosecution has produced Abdul Qadeer complainant (PW.1) who by reiterating the story of FIR stated that on the alleged day of occurrence, three brothers including the present petitioner started firing with their respective weapons upon injured Ghulam Farid and Arshad, whereas, the injured witnesses namely Muhammad Arshad and Ghulam Farid while appearing as PW.2 and PW.3, respectively, deposed with a different version that on the alleged day, a police dala came from front, police officials by signaling light stopped them, Iftikhar Ahmad deboarded from the vehicle and opened burst of his Kalashnikov upon them. They had not given any role to other two accused. During cross-examination, they deposed that petitioner Iftikhar Ahmad after coming out from the vehicle started abusing them and in response they also used same language against him. PW.2 though deposed that after 15/20 days of the occurrence when he read FIR, he came to know that complainant got lodged FIR against Irshad, Zulfiqar and Iftikhar, wherein, allegation of firing and causing injuries was levelled against all above three accused, however, he did not disclose to the complainant that firing was not made by all the three accused and it was only the petitioner who made firing and FIR has been wrongly registered against all the accused. In the light of above circumstances, the presence of complainant at the place of occurrence is doubtful and even his statement is contrary to the statement of injured witnesses as well as the other eye-witness namely Ilyas constable who stated that only two injured were available at the

crime scene and reviling continued for one or two minutes and after sustaining injuries by the injured persons, police took them to the hospital within half an hour. Even PW.5 admits that after receiving information of the occurrence, he took the injured within 10/15 minutes to the hospital and confined the accused in police lock-up on the same night. However, in his statement recorded under section 342 Cr.PC petitioner stated that he volunteered his arrest at the crime scene and this fact has been supported by the statement of Abdul Khaliq (PW.5) who admitted that he had confined the accused after returning from hospital. Even application for medical examination of the injured was submitted by Abdul Khaliq SI and not the complainant. This fact also doubts the presence of complainant at the spot. Moreover, Ghulam Sabir and Anwar who were also in the company of complainant as alleged in FIR have not been produced during trial.

8. Admittedly, in the instant occurrence, two persons received firearm injuries at the hands of present petitioner and whether his intention was to kill them, the defence has taken the stance that there was exchange of hot words between the petitioner and injured persons and, during this altercation, they tried to snatch official rifle from the petitioner which suddenly went off during grappling, otherwise, the petitioner had no intention to inflict injuries. The fact of using filthy language against each other has been admitted by the injured witnesses namely Muhammad Arshad (PW.2) and Ghulam Farid (PW.3) during their cross-examination. Moreover, fire hit the legs from a short distance, therefore, in such circumstances; possibility cannot be brushed aside that during grappling rifle suddenly went off and hit the legs of injured. Dr. Muhammad Ashraf (PW.7) medically examined both the injured and observed '*blackening'* around injury No.2 of Ghulam Farid and in injury No.1 of Muhammad Arshad. Such observation of doctor regarding blackening establishes the fact that there was a short distance in between petitioner and injured and they might have received injuries during grappling. Learned trial court in para-17 of the judgment though observed that:

> "*Even prosecution story is not proved as in the manner mentioned in the complaint and injured witnesses made false improvement while giving evidence, yet, admission on the part of accused about presence at the place of occurrence and of the injured is sufficient to prove that the accused armed with official rifle opened the fire".*

Yet admission or confession made by the accused should have been considered as a whole. Reliance in this respect is placed in the case reported as "*ALI AHMAD and another versus The STATE and others*" (**PLD 2020 Supreme Court 201**) wherein the Hon'ble Supreme Court has held that "*When prosecution fails to prove its case the statement of the accused, under section 342 Cr.P.C. is to be considered in its entirety and accepted as a fact*". This has been held in following manner;

> 20. The principles surrounding section 342, Cr.P.C have evolved for over a period of the last about two hundred years beginning with the case of Sarah Jones[34] (decided in 1827) and taking shape in Balmakund[35] as follows:
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> > "...where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible."

In the same judgment it has further been held;

> Muhammad Munir, J., in Rahim Bakhsh[22], regarding statement under section 342, Cr.P.C. wrote: "I know of no law which says that an admission made by an accused person in or out of court unless it is vitiated by any such circumstances as are mentioned in the Indian Evidence Act, cannot be considered to be a matter which the court may take into consideration in coming to its conclusion." The circumstances which can vitiate an admission or confession, referred to by the learned Judge, may be of inducement, threat or promise under which a particular statement is made. A statement under section 342, Cr.P.C. having been made by an accused before court in presence of his counsel has little chance of suffering from such circumstances.

9. In the circumstances, since the injuries caused by the petitioner are established but as observed above, there was no intention of the petitioner to cause such injuries and occurrence was result of a hustle bustle and grappling wherein rifle of accused/petitioner went off. Such grappling is also comprehensible when there exists an enmity between the parties; therefore, injuries were caused by Mistake (khata) attracting

section 337-I PPC and the conviction and sentence of the petitioner under section 337-F(v) PPC is not sustainable. Section 337-I is reproduced hereunder for reference;

> **337-I. Punishment for causing hurt by mistake (khata).__** Whoever causes hurt by mistake (Khata) shall be liable to arsh or daman specified for the kind of hurt caused.

Though there is no definition of mistake (khata) in PPC but import of section 318 PPC makes it clear that causing harm either by mistake of act or mistake of fact amounts to khata and section 319 PPC labels a rash and negligent act as khata, therefore, in the light of above observation, while setting aside the conviction and sentence under section 337 F(v) PPC, petitioner is convicted under section 337-I PPC and sentenced to pay Daman Rs.1,00,000/- to injured Ghulam Farid.

10. As regards the conviction under section 324 PPC is concerned, it is observed that section 324 PPC is attracted only in case of attempt to commit qatl-i-amd but when there is no evidence of intention or knowledge, question of attempt to commit qatl-i-amd does not arise. Since there was no intention of the petitioner in causing injuries, therefore, in the absence of intention, section 324 PPC would not be attracted, thus, the conviction under section 324 PPC and also the sentence recorded thereunder are set aside.

11. As regards the conviction under section 334 PPC, though itlaf-i-udw was result of injury but when it is caused by mistake, offender is liable only to Arsh for the injury under section 337-I of PPC. Thus, conviction and sentence against the petitioner imposed by the trial Court under section 334 PPC is set aside and accused/petitioner is convicted u/s 337-I PPC and sentenced to Arsh of Rs.5,47,408/- liable under section 334 PPC for payment to the injured Muhammad Arshad. As per jail report petitioner has already paid the amount of Daman and Arsh as mentioned above, therefore, there is no need to send the petitioner behind the bars for recovery thereof.

12. So far as the conviction and sentence under Article 155 (1) (c) of Police Order, 2002 is concerned, Article 155 (2) of the said Order

requires sanction of prosecution for trial of such offence which sanction is also missing in this case, therefore, it was not incumbent upon learned trial court to try such offence and to pass sentence, therefore, conviction and sentence under Article 155 (1) (c) of Police Order, 2002 are also set aside.

13. The contention of learned counsel for the petitioner that petitioner was in police service before the occurrence and upon his conviction he has been removed from service in his absence without waiting for outcome of this criminal revision, therefore, he may be reinstated into service because no imprisonment has been awarded to him which could stand in his way to reinstatement into service. Though no order can be passed in the present proceedings but for clarity of legal position, it is necessary to dilate upon this issue which arises almost in like cases when the offence is committed by a government service and upon conviction, he is removed from the service straight away without adverting to spirit of law and discretion vest upon the authorities under the relevant law.

14. Though primarily Police Rules are applicable for an action against the delinquent police officer of any rank, yet by the promulgation of Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (PEEDA, 2006), the inquiry was being conducted against the police officers/officials under said Act till year 2012, but later by amendment its application on police employees was restricted. However, both regimes are being discussed.

Rule.16.1 (1) of Police Rules, 1934 says that no police officer shall be departmentally punished otherwise than as provided in these rules; whereas sub-rule (2) mentions the authorities competent to inflict punishments on officers of the various ranks in tabulated form with following authorized punishments;

i. Dismissal
ii. Reduction in rank
iii. Stoppage of increment or forfeiture of approved service for increment
iv. Entry of censure
v. Confinement to quarters
vi. Extra guard fatigue or other duty
vii. Punishment drill

Punishment for dismissal can only be passed keeping in view the following rules of Chapter XVI of Police Rules, 1934;

> 16.2 **Dismissal**—Dismissal shall be awarded only for the ***gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service***. In making such an award regard shall be had to the length of service of the offender and his claim to pension.
>
> (2) an enrolled police officer ***sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe,*** shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simply imprisonment, or both or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may **be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him**. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filling an appeal has lapsed without appellate or reversionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16.1.
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> **(Emphasize supplied)**

The above rules clearly indicate that authority is clutched only if judicial sentence exceeds one month's imprisonment otherwise it is discretionary with the authority to go for dismissal or award a lesser sentence.

15. Awarding of punishment even on judicial sentence is not an automatic phenomenon rather a departmental inquiry is must and procedure is explained in Rule 16.24; conclusion of departmental inquiry is subject to decision on review under Rule 16.28 or on appeal under Rule 16.29. Even otherwise Rule 16.2 (2) above does not require to impose punishment if the civil servant is convicted rather it is the sentence that decides taking of departmental action and there is difference between conviction and sentence. Such rule authorizes infliction of punishment of dismissal only if the police officer is sentenced to rigorous imprisonment exceeding one month or to any other punishment not less severe. But in this case, petitioner has been finally sentenced to Arsh and Daman which are compensatory punishments. Therefore, under the Police Rules he should not have been dismissed

from service but this situation could only be attended after departmental inquiry.

16. Learned counsel for the petitioner has informed that the petitioner has been removed from service under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (PEEDA, Act 2006) after his conviction by the learned trial court. It is observed that PEEDA Act, 2006 is not applicable now on employees in police service. According to Section 1 (4) of PEEDA Act, 2006, it is applicable on followings;

> (4) It shall apply to–
> (i) employees in government service;
> (ii) employees in corporation service; and
> (iii) retired employees of government and corporation service; provided that proceedings under this Act are initiated against them during their service or within one year of their retirement.

And "*employee in government service*" is defined in the said Act in Section 2(h) but later its clause (ii) was substituted by the Punjab Employees Efficiency, Discipline and Accountability (Amendment) Act 2012 (XLVI of 2012) as under;

> (ii) in Government service or who is a member of a civil service of the province or who holds a civil post in connection with the affairs of the province or any employee serving in any court or tribunal set up or established by the Government but does not include–
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> (aa) a Judge of the Lahore High Court or any court subordinate to that Court or an employee of such courts; and
>
> (bb) an employee of Police.]

Even otherwise under such Act, dismissal from service is not mandatory on conviction in all types of offences. Relevant section is reproduced;

> **8. Action in case of conviction or plea bargain under any law: –** Where an employee is convicted by a court of law or has entered into plea bargain or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude or affecting human body under any law for the time being in force, the competent authority, after examining facts of the case, shall–
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> (a) dismiss the employee, where he has been convicted of charges of corruption or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily; or

> (b) proceed against the employee under section 7, where he has been convicted of charges other than corruption; or
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> (c) proceed against the employee under section 9, where he has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude or affecting human body.

As per clause (a) above, dismissal on conviction is only for offence of corruption etc. whereas for all other offences action under sections 7 or 9 of the Act is mandatory. Section-9 regulates the process of imposition of penalty after regular inquiry whereas section 7 though authorizes the authority to dispense with conduct of an inquiry and pass sentence after giving a show cause notice, yet it says that it must be in the presence of accused civil servant and in said eventuality authority can impose any one or more penalties mentioned in section 4; which makes it clear that penalty of dismissal from service is not mandatory in every situation. Authority can exercise discretion keeping in view the nature of allegations, past conduct of police official and length of service.

This expression has also a support from excerpts of Rule 7.5 of Civil Service Rules (Punjab) Volume-I which is reproduced for reference;

> In other cases, the authority shall decide as to whether any penalty should follow as a result of the decision of the case and if so, ***he may be punished in accordance with the Rules applicable to him*** and punishment should be ordered with retrospective effect from the date of trial court's order of conviction. **If the authority decides not to impose any penalty the government servant shall be deemed to be on extra ordinary leave** for the period he was unable to perform his functions as a result of his conviction by the trial court.
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> **(Emphasize supplied)**

As held above, PEEDA Act, 2006 is not applicable on employees of Police, they obviously would be governed under Chapter-XVI of Police Rules, 1934 and when they are being dealt under such rules, above excerpts shall also be kept in the mind. It is concluded that if any order adverse to the interest of petitioner has been passed at his back, it can well be challenged under the law.

17. The revision petition, however, is **dismissed** with modifications in conviction and sentence and observation made above. Case property, if

any, be disposed of in accordance with law and record of learned trial court be sent back immediately.

This judgment was pronounced on 10.05.2023 and after dictating and preparing, it was signed on 06.06.2023.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

*Gulzar**

Approved for reporting

JUDGE