

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE JAWWAD S. KHAWAJA

MR. JUSTICE DOST MUHAMMAD KHAN

HRC NO.4729-P/2011 in SMC.No.03/2009

(Application by Muhammad Shafi)

Applicant:	Malik Muhammad Shafi in person
On Court Notice:	Mr. Razzaq A. Mirza, Addl. A.G. Pb. Mr. Ejaz Ahmed, DFO, Rawalpindi Mr. Tasleen Ali, AC Saddar, Rawalpindi Mr. Iftikhar Ahmed Qureshi, CF, Rwp
For Bahrai Town:	Mr. Aitazaz Ahsan, Sr. ASC Raja Abdul Ghafoor, AOR
On Courts Call:	Mr. Israr Abbasi, CPO, Rawalpindi
Date of hearing:	14.7.2015

ORDER

Jawwad S. Khawaja, J. This case was taken up when the applicant Malik Muhammad Shafi brought to our notice the fact that on 28.10.2005 Raja Khalid Hussain, Chief Conservator of Forests had written a letter to the Deputy Inspector General of Police, Rawalpindi seeking registration of criminal case for beating up and unlawfully detaining govt. employees and in respect of encroachment on forest land, etc. Since the contents of the letter are important for the present purposes, the same is reproduced below in *extenso*:-

"PHONE NO.9271931

*OFFICE OF THE CHIEF CONSERVATOR OF FORESTS, NORTHERN ZONE,
RAWALPINDI*

To

*The Deputy Inspector General,
Police, Rawalpindi*

No. /RK dated 2005

*Subject: ENCROACHMENT ON FOREST LAND BY DESTROYING
TREES AND DETAINING FOREST OFFICERS—
REGISTRATION OF CRIMINAL CASE.*

It is stated that on 11.10.2005 the functionaries of Bahria Town started up-rooting of forest crop and encroaching forest land of a part of Rakh Lohi Bher Forest situated in Rawalpindi District by employing excavators and dumpers. The forest staff reached the site and stopped its work. The functionaries of Bahria Town

resumed its work in forest land on 24.10.2005. The forest party again stopped them and fenced the affected area with wooden poles. On 25.10.2005, Captain Shahid, Site Incharge, Bahria Town accompanying a number of persons of Bahria Town forcibly up-rooted the fence and re-encroached forest land besides beating M/S Jamshaid Khan, Block Officer, Muhammad Razwan and Ghazanffar Ali Forest Guards. Afterwards on 26.10.2005 at about 10 pm having come to know that Bahria Town Functionaries have again started destroying forest crop and encroaching forest land of Lohi Bher Forest situated in Rawalpindi District by employing heavy machinery, the Divisional Forest Officer Rawalpindi South reached the affected site in the accompany of Conservator of Forests, Coordination Circle, Rawalpindi, Divisional Forest Officer, Timber Extraction Division Rawalpindi, Divisional Forest Officer, Rawalpindi North Forest Division, Deputy Director, Wildlife Rawalpindi, Sub Divisional Forest Officer, Rawalpindi and other forest and Wildlife field staff. On reaching the site work of Bahria Town Functionaries being under-taken with the help of Habib Rafique & Company Limited was stopped at about 11:30 pm. The offenders however, succeeded in taking away 4 excavators along with dumpers whereas the 5th excavator was apprehended. The functionaries of Bahria Town and Habib Rafique & Company Limited made repeated attempts to make a quarrel with the forest staff and take away excavator but they could not succeed for about 2 hours. The offenders then arranged about 100 person equipped with arms and sticks and attacked the forest party. The offenders thus succeeded in kidnapping M/S Bashir Ahmad, Conservator of Forest, Coordination Circle Rawalpindi and Sardar Fida Hussain, Divisional Forest Officer, Timber Extraction Division Rawalpindi whereas the other forest officers and Wildlife staff escaped. The forest officers so kidnapped were seriously beaten and beaten to shot to death. After about 2 hours the officers detained illegally⁶ were released at far flung place.

Under the circumstances explained above it is requested that SHO Civil Lines Police Station may please be directed to register FIR against the offenders (functionaries of Bahria Town and Habib Rafique & Company Limited for destroying forest crop and encroaching forest land measuring 3 Kanals, kidnapping, beating and threatening of forest officers and interfering of forest officers and staff in discharging their Government duties. An immediate action is requested in the regard.

Enclosed:- Written request for
 Registration of FIR

(RAJA KHALID HUSSAIN)
CHIEF CONSERVATOR OF FORESTS
NORTHERN ZONE RAWALPINDI

394-99/RK 28.10.2005"

2. We are therefore, concerned to learn as to whether a case has been registered on the basis of the said letter and if so, whether the same has been discharged or challaned after investigation. We asked the learned Additional Advocate General to ascertain this fact. He has confirmed that no FIR had been registered even to date. This has also been confirmed by Mr. Iftikhar Ahmed Qureshi, Conservator of Forests, who is present in Court.

3. Mr. Aitazaz Ahsan, learned Sr. ASC has stated that there is a whole history behind this case. We, however, asked him to show us if in the above circumstances there is any law, which says that police may refuse to register a case in such eventuality even where a cognizable offence has been committed as per contents of the complaint. He did not give an answer but stated that there is no encroachment on forest land. In response, Mr. Razzaq A. Mirza, learned Additional A.G states that there is definite encroachment of 684 acres according to official inquiries and record. This, however, is wholly irrelevant in the light of the above reproduced letter. In any event, it is for the police to investigate and if indeed the client of Mr. Aitazaz Ahsan has any facts available with him, he may bring those to the notice of the police. Likewise if the Conservator of the Forests has any information, he may also bring it to the notice of the police. We are not to embark on any investigation of these factual matters.

4. Learned Sr. ASC then stated that an application had been moved by Syed Ali Zafar, ASC and by Malik Riaz Hussain through a private letter, addressed to the Hon'ble Chief Justice, stating that one of us (Jawwad S. Khawaj, J.) should recuse from hearing this case. Mr. Aitazaz also acknowledged that the application and private letter referred to above were being dealt with in CMA 3854/14 and CMA-4341 of 2014. That is a matter which has been delinked from this case. However, for ease of reference we may mention that vide orders dated 2.4.2015 and 31.3.2015, we had asked Syed Ali Zafar ASC to give his explanation in respect of the matters mentioned in our said orders. His reply being found unsatisfactory, an order was passed on 9.4.2015 that *"since there is no valid explanation forthcoming from Mr. Ali Zafar, ASC in respect of the issues which have been highlighted above and in our order of 31.3.2015, we are inclined to the view that Mr. Ali Zafar has been guilty of misconduct and conduct unbecoming of an Advocate. The dignity and high standing of the legal profession and of Judges and Courts has to be defended for the sake of the independence of the Judiciary and Bar and for the effective administration of justice. This has to be done, if necessary, especially in the face of*

misconduct or conduct which is unbecoming of an Advocate. Such conduct must be curbed if the honour and dignity of the Bar and Bench are to be preserved. We, therefore, issue notice to Mr. Ali Zafar to show cause why action envisaged under Order IV Rule 30 of the Supreme Court Rules (including suspension/removal from practice) be not taken against him”.

5. That matter, however, is not listed before us today and we, therefore, do not intend to decide the same particularly when Syed Ali Zafar who is respondent in the show case notice, is not present.

6. Mr. Israr Abbasi, CPO, Rawalpindi appeared on Court call. He shall submit a report, as to whether any FIR was registered, pursuant to the above reproduced letter of the Conservator of the Forests and if so, what is the outcome of such FIR. Secondly, he shall also state that if no FIR was registered, the reasons for not registering the same. Let this be done within this week.

7. Re-list on 23.07.2015.

Judge

Judge

Islamabad, the

14th July, 2015

Nisar /-'

APPROVED FOR REPORTING.