

**IN THE SUPREME COURT OF PAKISTAN**

(Original Jurisdiction)

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa  
Mr. Justice Dost Muhammad Khan  
Mr. Justice Sajjad Ali Shah

**Criminal Original Petition No. 154 OF 2017**

in

**Criminal Miscellaneous Application No. 985 of 2017**

in

**Civil Miscellaneous Application No. 2939 of 2017**

in

**Constitution Petition No. 29 of 2016, etc.**

(Contempt proceedings against Senator Nehal Hashmi on the basis of the speech made by him on 28.05.2017)

For the Prosecution: Mr. Ashtar Ausaf Ali, Attorney-General for Pakistan/Prosecutor

For the Respondent: Mr. Kamran Murtaza, ASC  
with the respondent in person

Dates of hearing: 01.06.2017, 05.06.2017, 16.06.2017,  
23.06.2017, 10.07.2017, 24.07.2017,  
13.09.2017 & 24.01.2018

**JUDGMENT**

**Asif Saeed Khan Khosa, J.:** If the Judges of this Court were weaklings or feeble at heart and if they could be frightened or browbeaten by verbal assaults or naked threats then the respondent namely Senator Nehal Hashmi had surely made a valiant attempt at that. It, however, appears that he and those he wanted to obey or please are poor judges of men. On 20.04.2017 two Members of the Larger Bench of this Court hearing the case of

Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan / Member National Assembly, Prime Minister's House, Islamabad and nine others (PLD 2017 SC 265), popularly known as the Panama Papers case, declared the head of the respondent's political party (the then serving Prime Minister of Pakistan) disqualified to be elected to or remain a member of the Majlis-e-Shoora (Parliament) under Article 62(1)(f) of the Constitution and ordered his criminal prosecution by the National Accountability Bureau before an Accountability Court. Some others very closely related to or connected with him were also ordered to face similar prosecution. On that occasion the other three Members of that Larger Bench decided to get some investigation conducted into the allegations of corruption and corrupt practices leveled against him and others through a Joint Investigation Team (JIT). During the pendency of that investigation the respondent addressed a meeting of the workers of his political party at the Muslim League House, KDA Scheme No. 1, Karsaz Road, Karachi on 28.05.2017 and in his speech he launched an all-out verbal assault upon the Members of the Larger Bench of this Court as well as the members of the Joint Investigation Team and such assault included serious threats not only to them but also to their families and children which threats could not by any stretch of imagination or construction be termed as veiled. An extract from that speech made by the respondent on that occasion is reproduced below:

"اور سن لو! جو حساب ہم سے لے رہے ہو، وہ تو نواز شریف کا بیٹا ہے ہم نواز شریف کے کارکن ہیں حساب لینے والو، ہم تمہارا پوم حساب بنادیں گے۔ جنہوں نے بھی حساب لیا ہے اور جو لے رہے ہیں کان کھول کے سن لو ہم نے چھوڑنا نہیں تم کو آج حاضر سروس ہو کل ریٹائر ہو جاؤ گے تمہارے بچوں کیلئے تمہارے خاندان کیلئے پاکستان کی زمین تنگ کر دیں گے ہم، تم پاکستان کے باضمیر، باکردار، نواز شریف کا زندہ رہنا تنگ کر رہے ہو، پاکستانی قوم تمہیں تنگ کر دے گی۔ اور بنی گالہ میں رہنے والو یہ عمارت جو ماڈل ٹاؤن کا گھر ہے یہ خون پسینے کا گھر ہے یہ یہودی سرمایہ سے نہیں بنا۔ یہ جمائے کے پیسے سے نہیں بنایا یہ محمد شریف کا گھر ہے۔ محنت کش کے پیسوں سے بنا ہے۔ اور یہ قوم تمہارے لئے بھی زمین تنگ کر دے گی۔"

That speech of the respondent was repeatedly telecast on various national television channels and the same received wide national and international publicity.

2. The Registrar of this Court brought the matter to the notice of the Hon'ble Chief Justice on 31.05.2017 and his lordship was pleased to order on the same day that the matter may be placed before the Hon'ble Members of the Implementation Bench seized of the issues on the basis of the order passed by the Larger Bench on 20.04.2017. On that very day, i.e. 31.05.2017 the Hon'ble Members of the Implementation Bench unanimously ordered a notice to be issued to the respondent to appear before the Court in person on 01.06.2017 and to show cause why proceedings for committing contempt of Court might not be initiated against him. A notice was also ordered to be issued to the learned Attorney-General for Pakistan in that regard.

3. On 01.06.2017 the respondent appeared before this Court in person and upon his request he was allowed three days' time to file his reply to the show cause notice. On that date the learned Attorney-General for Pakistan was appointed as the Prosecutor and was directed to collect and place on the record all the necessary material. On 05.06.2017 the respondent's request for some more time for filing his reply to the show cause notice was acceded to and he was directed to submit the requisite reply within the extended time positively. On 16.06.2017 the respondent was allowed some more time to file his reply to the show cause notice because he had expressed his inability to do the needful without going through the transcript of his relevant speech which was not available with him. On that date of hearing a copy of the transcript of his relevant speech was supplied to the respondent by the learned Attorney-General within the view of the Court. On 20.06.2017 a reply to the show cause notice was filed by the respondent through Criminal Miscellaneous Application No. 1150 of 2017 and in his reply he contested issuance of the said notice and called for its withdrawal. On 23.06.2017 the respondent absented from the Court without any prior permission but the reply to the show cause notice submitted by him was perused by the Court with the assistance of the learned counsel for the

respondent and the learned Attorney-General and they were also heard on the issue. After the said preliminary hearing and having remained dissatisfied with the respondent's reply the matter was adjourned by the Court to 10.07.2017 for framing of the Charge against the respondent. On 07.07.2017 the respondent filed a 'Further Reply' to the show cause notice through Criminal Miscellaneous Application No. 1202 of 2017 without seeking any permission from the Court in that regard and towards the end of the said reply he submitted in paragraph No. 21 as follows:

"That I am innocent law obeying citizen, member of Senate of Pakistan and Senior Lawyer thus cannot even imagine to commit any act intentionally or willfully which can be taken as against the Judiciary. I say during 30 years of legal practice on entering Court room, the Answering Respondent always paid respect by bowing because the courts. As a lawyer saying sorry before the court is honor itself, therefore, if this Hon. Court points out any fault I will tender unqualified and unconditional apology forthwith in the honor of Bench and Bar. I say neither I interfered nor obstruct in the court process intentionally or willfully."

On 10.07.2017 the respondent was in attendance along with his learned counsel and a Charge was framed against the respondent to which he pleaded not guilty and claimed a trial. The Charge framed against the respondent reads as follows:

#### CHARGE

That you Nihal Hashmi son of Sagheer ud Din Hashmi on 28.05.2017 while addressing a public gathering in Muslim League House, Karachi delivered a speech in which you uttered in following words:-

"حساب لینے والو! ہم تمہارا یومِ حساب بنا دیں گے۔ جنہوں نے بھی حساب لیا ہے اور جو لے رہے ہیں کان کھول کے سن لو ہم نے چھوڑنا نہیں تم کو۔ آج حاضر سروس ہو کل ریٹائرڈ ہو جاؤ گے۔ تمہارے بچوں کیلئے، تمہارے خاندان کیلئے پاکستان کی زمین تنگ کر دیں گے ہم۔۔۔"

یہاں چند سازشی وہ کسی بھی ادارے میں ہوں میں آنکھ میں آنکھ ڈال کر کہہ رہا ہوں چھوڑیں گے نہیں ہم۔"

That by way of the aforesaid speech you threatened Judges of the Supreme Court of Pakistan their families and children and Members of the JIT and their families and children;

That your above mentioned act tends to scandalize the Court and bring the authority of the Court into hatred, ridicule, disrespect and you thereby obstructed, interfered with and prejudiced the process of law and due course of proceedings of the Supreme Court of Pakistan and by doing so have committed Contempt of the Supreme Court of Pakistan within the meanings of Article 204(2) of the Constitution of the Islamic Republic of Pakistan read with Section 3 of the Contempt of Court Ordinance, 2003 (Ordinance V of 2003) ("the Ordinance") Punishable under Section 5 of the Contempt of Court Ordinance, 2003 which is cognizable by this Court;

We thus proceed to try you on the above charge.

Islamabad.  
July, 10<sup>th</sup>, 2017.

On that date the learned Attorney-General was put on notice and was required to conduct the proceedings on behalf of the prosecution and to file all the relevant documents including a list of witnesses for the prosecution. The respondent was also directed to file all the documents on which he wanted to place reliance and also to file his list of witnesses. The office of this Court was directed to register the matter as a Criminal Original Petition and to fix the same for hearing on 24.07.2017. On 22.07.2017 the respondent filed Criminal Miscellaneous Application No. 1311 of 2017 seeking permission to file a written statement, to adduce evidence in his defence and to appear as his own witness for making a statement on oath.

4. On 24.07.2017 the statement of Haji Adam, Director-General, Pakistan Electronic Media Regulatory Authority (PEMRA) was recorded as CW1 and he produced a Compact Disc containing recording of the relevant speech of the respondent as Exhibit-CW1/1, transcript of the relevant speech of the respondent as Exhibits-CW1/2 to CW1/5 and a list of television channels which had aired parts of the relevant speech of the respondent on 31.05.2017 and 01.06.2017 as Exhibits-CW1/6 and CW1/7. On the same date the learned Attorney-General placed on the record a

copy of Criminal Miscellaneous Application No. 1150 of 2017 along with its annexures as Exhibit-P/1 and then he closed the prosecution's evidence. On that date a request made by the learned counsel for the respondent for permission to add to the reply to the show cause notice already submitted by the respondent was allowed by the Court and the respondent was permitted to do the same within the next two weeks and also to file a list of his witnesses within the said period. On 16.08.2017 the respondent filed Criminal Miscellaneous Application No. 1499 of 2017 containing a 'Statement' of the respondent as well a list of his witnesses and in paragraph No. 7(xiv) of that 'Statement' the respondent stated as follows:

"I say that if this Honourable Court points out any word which tantamount to contempt of this Honourable Court I shall feel no hesitation to tender an unconditional apology and will throw myself at the mercy of this Hon'ble Court without any delay as already stated in further reply."

5. On the next date of hearing, i.e. 13.09.2017 the learned Advocate-on-Record for the respondent sought an adjournment which was granted because the learned counsel for the respondent could not appear and the learned Attorney-General was abroad in connection with some professional engagements. On the next date of hearing, i.e. 24.01.2018 a statement captioned as 'Unconditional Apology' and signed by the respondent as well as his learned counsel was filed before the Court through Criminal Miscellaneous Application No. 67 of 2018 and the operative part of the same reads as follows:

"Humbly Sheweth:-

1. That the above noted proceeding is pending before this Hon'ble Court and fixed for today i.e 24.01.2018.

2. That through the accused-respondent initially contested the contempt proceeding but he has now decided that not to contest the same any more as the respect of the Court and the orders passed by it are above from everything, hence in the circumstance he tender his unconditional apology & place him at the mercy of this Hon'ble Court."

This Court passed the following order on that date:

"The respondent has tendered an unconditional apology and has placed himself at the mercy of the Court. The learned counsel for the respondent has submitted that the respondent does not want to contest these proceedings.

2. The judgment in the matter is reserved and the same shall be announced in due course."

6. As the respondent has decided not to contest these proceedings and has submitted an unconditional apology, therefore, the first question to be answered is as to whether he has committed contempt of this Court or not. Through the relevant speech made by him on 28.05.2017 the respondent had established that he is a firebrand speaker and the tone, the pitch and the delivery of the offending words bear an ample testimony to that but unfortunately on that day he had spewed fire towards a wrong direction. He attacked the judiciary, the judges and those who were tasked by this Court to investigate some allegations of criminal conduct on the part of the respondent's political leader, his family and others. He launched a verbal tirade and issued naked threats which he now himself realizes to be improper, unwise and imprudent. The offending words uttered by the respondent in the relevant speech, which words are admitted and not denied by him, were nothing but an effort to obstruct, interfere with and prejudice the proceedings pending before this Court and before the Joint Investigation Team working under the direct command and supervision of this Court in the Panama Papers case. In this Court's order dated 05.05.2017 passed in Civil Miscellaneous Application No. 2939 of 2017 in Constitution Petition No. 29 of 2016 it had clearly been observed that "As the JIT, in essence and substance, is acting on the direction of the Supreme Court of Pakistan, all the Executive Authorities throughout Pakistan shall act in aid of the JIT." Again in the same matter this Court had clarified and directed on 11.05.2017 that "during the course of investigation all the Members of JIT shall be deemed to be under the Registrar, Supreme Court of Pakistan who shall for all intents and purposes be the Competent Authority for the JIT." It is not open to any manner of doubt that the offending

words uttered by the respondent in public were meant to interfere with, obstruct and prejudice the process of law, justice and this Court and were also intended to bring the authority of this Court and administration of law into disrespect, disrepute or hatred within the meanings of section 3 of the Contempt of Court Ordinance, 2003 (Ordinance No. V of 2003) and Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973. The manner in which the respondent had acted on the occasion was surely prejudicial to the integrity and independence of the judiciary of Pakistan as a whole as it had defamed and brought it into ridicule. While adverting to the provisions of section 18 of the Contempt of Court Ordinance, 2003 (Ordinance No. V of 2003) we have felt satisfied that the contempt committed by the respondent is quite grave and is one which is substantially detrimental to the administration of justice besides tending to bring this Court and the Judges of this Court into disrespect and hatred. Section 5(2) of the said Ordinance dealing with submission of an apology by a person accused of having committed contempt of court does not envisage an automatic acceptance of the apology by the court but makes its acceptance subject to the court's satisfaction about its *bona fide*. The apology tendered by the respondent on 24.01.2018 itself mentioned that initially the respondent had contested the proceedings and the same is also evident from his reply to the show cause notice dated 20.06.2017, his 'Further Reply' dated 07.07.2017 and his 'Statement' dated 16.08.2017. The belated apology submitted by the respondent after about seven months of commencement of these proceedings and at the fag end of such proceedings when the evidence of the prosecution has already been completely recorded and closed speaks volumes about the apology being an afterthought. The conduct of the respondent in this regard impinges upon *bona fide* of his apology and, thus, the same has not been found to be meriting acceptance. Such apology of the respondent may, however, have some bearing upon the sentence to be passed against him. In view of what has been observed above the respondent is held guilty of committing contempt of this Court as charged.



7. The next question to be considered is about the sentence to be passed against the respondent. Although the offending words publically uttered by the respondent, which words had received wide publicity nationally as well internationally, amounted to a grave contempt of this Court yet there are some mitigating circumstances available warranting withholding the maximum sentence provided for the offence by the law. The respondent is about sixty years of age, he is an Advocate for the last about thirty years, he has submitted an unconditional apology though belatedly, he has thrown himself at the mercy of the Court and has decided not to contest these proceedings and upon his conviction for the offence of contempt of court he is to be visited with a disqualification under Article 63(1)(g) of the Constitution.

8. For what has been discussed above the respondent is convicted for the offence under section 3 of the Contempt of Court Ordinance, 2003 (Ordinance No. V of 2003) read with Article 204(2) of the Constitution of the Islamic Republic of Pakistan, 1973 and is sentenced under section 5(1) of the said Ordinance to simple imprisonment for one month and a fine of Rs. 50,000/- (Rupees fifty thousand only) or in default of payment thereof to undergo simple imprisonment for a further period of fifteen days. He is to be taken into custody and he shall be lodged in the Central Prison, Rawalpindi for serving his sentence.

9. As the respondent has been convicted and sentenced by this Court for acting in a manner prejudicial to the integrity and independence of the judiciary of Pakistan and for defaming and bringing the judiciary into ridicule, therefore, by virtue of the law declared by this Court in the case of Muhammad Azhar Siddique and others v. Federation of Pakistan and others (PLD 2012 SC 774) with reference to Article 63(1)(g) of the Constitution of the Islamic Republic of Pakistan, 1973 he *ipso facto* stands disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament) for a period of five years from today. Let a copy of this judgment be sent to the Election Commission of

Pakistan for an immediate appropriate action in that respect.

(Asif Saeed Khan Khosa)  
Judge

For reasons purely personal I  
abstain from recording any opinion.

(Dost Muhammad Khan)  
Judge

I agree with my learned brother Asif  
Saeed Khan Khosa, J.

(Sajjad Ali Shah)  
Judge

### **JUDGMENT OF THE COURT**

With a consensus of two Members of the Bench and with one Member of the Bench (Dost Muhammad Khan, J.) abstaining Senator Nehal Hashmi respondent is convicted for the offence under section 3 of the Contempt of Court Ordinance, 2003 (Ordinance No. V of 2003) read with Article 204(2) of the Constitution of the Islamic Republic of Pakistan, 1973 and is sentenced under section 5(1) of the said Ordinance to simple imprisonment for one month and a fine of Rs. 50,000/- (Rupees fifty thousand only) or in default of payment thereof to undergo simple imprisonment for a further period of fifteen days. He is to be taken into custody and he shall be lodged in the Central Prison, Rawalpindi for serving his sentence.

As the respondent has been convicted and sentenced by this Court for acting in a manner prejudicial to the integrity and independence of the judiciary of Pakistan and for defaming and bringing the judiciary into ridicule, therefore, by virtue of the law declared by this Court in the case of Muhammad Azhar Siddique and others v. Federation of Pakistan and others (PLD 2012 SC 774) with reference to Article 63(1)(g) of the Constitution of the Islamic Republic of Pakistan, 1973 he *ipso facto* stands disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament) for a period of five years from today. Let a copy of this judgment be sent to the Election Commission of Pakistan for an immediate appropriate action in that respect.

(Asif Saeed Khan Khosa)  
Judge

(Dost Muhammad Khan)  
Judge

(Sajjad Ali Shah)  
Judge

Announced in open Court at Islamabad on 01.02.2018.

(Asif Saeed Khan Khosa)  
Judge

Islamabad.  
01.02.2018  
Approved for reporting.  
Arif