IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Asif Saeed Khan Khosa, CJ
Mr. Justice Mushir Alam
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Sardar Tariq Masood
Mr. Justice Ijaz Ul Ahsan
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Syed Mansoor Ali Shah

Civil Appeal No. 1772 of 2008 and Civil Miscellaneous Application No. 1990 of 2015
(Against the judgment dated 14.07.2008 passed by the High Court of Sindh, Karachi in Constitution Petition No. D-1372 of 2008)

Moinuddin, etc.

...Appellants

versus

The State, etc.

...Respondents

Civil Petition No. 1708 of 2011
(Against the judgment dated 09.06.2011 passed by the Lahore High Court, Lahore in Writ Petition No. 6915 of 2011)

Abdul Rehman

...Petitioner

versus

The State, etc.

...Respondents

Civil Appeal No. 253 of 2015
(Against the judgment dated 16.03.2015 passed by the Lahore High Court, Lahore in Writ Petition No. 21957 of 2012)

Muhammad Qaiser alias Billa

...Appellant

versus

The learned District & Sessions Judge/Judge ATC No. 1, Faisalabad, etc.

...Respondents

Criminal Petition No. 988 of 2015

(Against the judgment dated 29.01.2015 passed by the High Court of Sindh at Sukkur in Criminal Revision Application No. 40-D of 2014)

Waryam, etc.

...Petitioners

versus

The State

...Respondent

Criminal Appeal No. 391 of 2015

(Against the judgment dated 13.08.2015 passed by the Lahore High Court, Multan Bench, Multan in Criminal Revision No. 267 of 2015)

Zafar Hussain, etc.

...Appellants

versus

The State, etc.

...Respondents

Criminal Appeal No. 19 of 2018

(Against the judgment dated 27.01.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No. 98-J of 2014, Criminal Appeal No. 324 of 2014, Criminal Appeal No. 337 of 2014 an Capital Sentence Reference No. 11-T of 2014)

Kalay Khan

...Appellant

versus

The State

...Respondent

In attendance:

Mr. Shahid Azeem, ASC
Mr. Javed Iqbal Raja, ASC
Mr. Burhan Moazam Malik, ASC
Mian Pervaiz Hussain, ASC
Syed Tayyab Mehmood Jaffari, ASC
Mr. Muhammad Ishtiaq Ahmed Raja, ASC
Raja Abdul Ghafoor, AOR
Malik Ghulam Mustafa Kandwal, ASC
Mr. Kamran Murtaza, ASC
Mr. Abid Hussain Saqi, ASC
Mr. Muhammad Sadiq Baloch, ASC
Ch. Munir Sadiq, ASC
Mr. Zulfiqar Khalid Maluka, ASC
Mr. Khadim H. Sandhu, ASC

On Court's Notice:	Mr. Sajid Ilyas Bhatti, Deputy Attorney-General of Pakistan Mr. Tariq Mehmood Jehangiri, Advocate-General, Islamabad Mr. Ahmed Awais, Advocate-General, Punjab Ch. Faisal Farid, Additional Advocate-General, Punjab Mr. Ahmed Raza Gillani, Additional Prosecutor-General, Punjab Barrister Shabbir Hussain Shah, Additional Advocate-General, Sindh Mr. Salim Akhtar, Additional Prosecutor-General, Sindh Mr. Zahid Yousaf Qureshi, Additional Advocate-General, Khyber Pakhtunkhwa Syed Baqar Shah, State Counsel, Balochistan Mr. Ayaz Khan Swati, Additional Advocate-General, Balochistan
Date of hearing:	02.04.2019

JUDGMENT

Asif Saeed Khan Khosa, CJ.: The offence of 'terrorism' defined in section 6 and punishable under section 7 of the Anti-Terrorism Act, 1997 is not a compoundable offence but in many cases the offence of terrorism is committed simultaneously with commission of some other offence and such other coordinate offence may sometimes be a compoundable offence. The effect of compounding of such coordinate compoundable offence upon the non-compoundable offence of terrorism or some other non-compoundable offence is a question which has been referred to the present Larger Bench for resolution. The circumstances in which this question has arisen in the present cases are briefly narrated as follows:

Civil Appeal No. 1772/2008

(*Moinuddin and another v The State and others*)

The appellants were convicted and sentenced to death under section 302(a), PPC read with section 7 of the Anti-Terrorism Act, 1997 besides having been convicted and sentenced for some other

offences. The appellants' appeal was dismissed by the High Court and their appeal before this Court was also dismissed. The appellants then filed a Criminal *Suo Motu* Review Petition before this Court which too was dismissed and their Mercy Petition was subsequently dismissed by the President of Pakistan. Later on the parties entered into a compromise but the same was disallowed by the trial court and the appellants' Constitution Petition against the said order was dismissed by the High Court which order was challenged before this Court and the matter was referred to the present Larger Bench to determine whether a compromise in respect of the offence of murder can be treated as a mitigating circumstance for reducing the sentence of death under section 7 of the Anti-Terrorism Act, 1997 to imprisonment for life at such a stage or not. Through an order passed on 22.04.2015 in Civil Miscellaneous Application No. 1990 of 2015 this Court had suspended execution of the appellants' sentences of death during the pendency of their main appeal.

Civil Petition No. 1708 of 2011

(*Abdul Rehman v The State and another*)

The petitioner was tried by the Anti-Terrorism Court, Sargodha and was convicted and sentenced to death under section 302(b), PPC as well as under section 7 of the Anti-Terrorism Act, 1997 besides having been convicted and sentenced for some other offences. The petitioner's appeal was dismissed by the High Court and his appeal before this Court also met the same fate. Thereafter the petitioner filed Criminal Review Petition 65 of 2010 before this Court which was also dismissed *vide* order dated 11.11.2010. The petitioner then filed an application before the Anti-Terrorism Court, Sargodha seeking permission to compound the offences against him. The said application was rejected by the said court *vide* order dated 18.02.2011 which order was upheld by the High Court on 16.08.2011 and the petitioner has challenged the said order before this Court through this petition.

Civil Appeal No. 253 of 2015

(*Muhammad Qaiser @ Billa v The learned District & Session Judge/Judge ATC No. 1, Faisalabad and others*)

The appellant was tried by the Anti-Terrorism Court, Faisalabad and was convicted and sentenced to death for the offence under section 302(b), PPC as well as for the offence under section 7 of the Anti-Terrorism Act, 1997 besides having been convicted and sentenced for some other offences. The appellant's appeals were dismissed by the High Court and also by this Court and his convictions and sentences were upheld. The appellant then filed a Criminal *Suo Motu* Review Petition before this Court which was dismissed and his Mercy Petition was also rejected by the President of Pakistan. In a subsequent round the appellant's application for compromise was dismissed by the trial court and the High Court refused to interfere in the same. Leave to appeal was granted by this Court to examine the effect of a compromise in the compoundable offences on the sentence passed under section 7 of the Anti-Terrorism Act, 1997 which offence is non-compoundable.

Criminal Petition No. 988 of 2015

(*Waryam and another v The State*)

The petitioners were tried by the Anti-Terrorism Court, Sukkur and were convicted and sentenced to imprisonment for life for the offence under section 302(b), PPC and also for the offence under section 7 of the Anti-Terrorism Act, 1997 besides having been convicted and sentenced for some other offences. The petitioners' appeal was dismissed by the High Court and their Jail Petition filed before this Court was also dismissed. Subsequently the parties entered into a compromise but the trial court refused to give effect to it and later on a revision petition filed by the petitioners in that regard was dismissed by the High Court which order was assailed by the petitioners before this Court through a Criminal *Suo Motu* Review Petition which is being treated as the instant petition.

Criminal Appeal No. 391 of 2015

(*Zafar Hussain and another v The State and others*)

The appellants were convicted by the trial court for the offence under section 396, PPC and were sentenced to death and they were also convicted for the offence under section 302(c), PPC and were sentenced to rigorous imprisonment for 10 years and later on their convictions and sentences had been upheld and maintained by the High Court as well as this Court. The appellants then filed Criminal Review Petition 106 of 2015 before this Court which was also dismissed *vide* order dated 08.09.2015. Subsequently the parties entered into a compromise but the trial court refused to give effect to it and a revision petition filed by the appellants in that regard before the High Court was also dismissed. Leave to appeal was granted by this Court to consider whether the sentences of death awarded to the appellants for the offence under section 396, PPC, which is a non-compoundable offence, could be converted into imprisonment for life in view of the compromise affected between the parties in the coordinate compoundable offence.

Criminal Appeal No. 19 of 2018

(*Kalay Khan v The State*)

The appellant was convicted by the trial court for the offences under section 302(b), PPC and section 7(a) of the Anti-Terrorism Act, 1997 and was sentenced to death for both the said offences besides having been convicted and sentenced for the offences under section 324, PPC, section 148, PPC and section 7(c) of the Anti-Terrorism Act, 1997. During pendency of the appellant's appeal before the High Court the complainant party entered into a compromise with the appellant leading to his acquittal from the charge under section 302(b), PPC and conversion of his sentence of death under section 7(a) of the Anti-Terrorism Act, 1997 to imprisonment for life. Leave to appeal was granted by this Court to examine the effect of a compromise in connection with a compoundable offence on the conviction and sentence recorded for an offence under the Anti-Terrorism Act, 1997 which offence is non-compoundable.

2. We have heard the learned counsel for the parties and the learned law officers at some length and with their assistance we have attended to the factual and legal issues involved in these cases as well as the precedent cases available on the subject.

3. We find that three questions emerging from the facts of the present cases need to be answered and they are as follows:

(i) Can a non-compoundable offence be treated as a compoundable offence for the purpose of recording an acquittal in respect of that offence if a coordinate compoundable offence committed in the same case has been compounded by the relevant parties?

(ii) Can the sentence passed in a non-compoundable offence be reduced on the ground that a coordinate compoundable offence committed in the same case has been compounded by the relevant parties?

(iii) If the answer to question No. (ii) is in the affirmative then at what stage and by which court or forum reduction in the sentence passed in respect of a non-compoundable offence be ordered, if deemed warranted in the circumstances of the case?

4. A careful perusal of different precedent cases decided by this Court shows that the answers to all these questions are already available in such cases but they are in a scattered form and the same need to be consolidated so that the above mentioned questions may be answered with clarity and any confusion in that regard may be removed. The relevant extracts from such precedent cases are reproduced here for facility of reference:

Muhammad Rawab v The State
(2004 SCMR 1170)

"3. Heard Dr. Babar Awan, learned Advocate Supreme Court on behalf of appellant and learned Advocate-Generals for the State. The pivotal question which needs determination would be as to whether parties can be allowed to compound the offences which are not compoundable by virtue of the provisions as contemplated in section 345, Cr.P.C. specially in view of the specific bar as mentioned in subsection (7) of section 345, Cr.P.C. There is no denying the fact that section 365-A, P.P.C. read with section 7(e) of the Anti-Terrorism Act, 1997 is not compoundable. The provisions as contained in section 345(7), Cr.P.C. have been couched in such a plain and simple language that there is hardly any scope for any interpretation except that a non-compoundable offence cannot be made compoundable by this Court for the simple reason that no amendment, deletion, insertion or addition could be made by this Court and it could only be done by the Legislature as this aspect of the matter falls in its exclusive domain of jurisdiction. The provisions as contained in section 345, Cr.P.C. cannot be stretched too far by including the non-compoundable offence therein under the garb of humanitarian grounds or any other extraneous consideration. The offences committed by the appellant are not of grave and alarming nature but the same are against the society as a whole and cannot be permitted to compound by any individual on any score whatsoever. It may be noted that tabulation of the offences as made under section 345, Cr.P.C. being unambiguous remove all doubts, uncertainty and must be taken as complete and comprehensive guide for compounding the offences. The judicial consensus seems to be that "The Legislature has laid down in this section the test for determining the classes of offences which concern individuals only as distinguished from those which have reference to the interests of the State and Courts of law cannot go beyond that test and substitute for it one of their own. It is against public policy to compound a non-compoundable offence, keeping in view the state of facts existing on the date of application to compound. No offences shall be compounded except where the provisions of section 345, Cr.P.C. are satisfied as to all matters mentioned in the section". (Emphasis provided).

4. The above judicial consensus is based on the following authorities:--

> Dalsukhram Hargovandas v. Charles DeBretton 28 Bom. 326; Meenakshi Sundarammal v. Subramaniam Ayyar AIR 1955 Mad. 369; Akshoy Singh v. Rameshawar Bagdi AIR 1917 Cal. 705; Mt. Rani v. Mt. Jaiwanti AIR 1925 Nag. 395; Crown v. Muhammad Hussain PLD 1950 Lah. 86; Gurunarayan Das and others's case AIR 1948 Pat. 58; Agha Nazarali Sultan Muhammad v. Emperor AIR 1941 Sind 186; Emperor v. Jarnally and others AIR 1925 Lah. 464; Ghulam Rasool v. State 1999 MLD 3085; Muhammad Asif v. State 1991 MLD 1026; Noor Muhammad alias Noora v. State 1992 SCMR 2079; Muhammad Nazir alias Jeera v. State PLD 2001 Lah. 212; Muhammad Anwar v. State 1986 MLD 1111; Nawab-ul-Hassan v. State 2003 SCMR 658 and Yousaf Ali v. State 2002 SCMR 1885."

Ghulam Farid alias Farida v The State
(PLD 2006 SC 53)

"5. The offence of dacoity is not compoundable either under pure Islamic Law or under the statutory law of Pakistan, therefore, the contention of the learned counsel that notwithstanding the circumstances under which the murder had

taken place, Qatl with no distinction is compoundable in Islam and the bar of statutory law would not be applicable, has no substance. There is concept of right of Afw and Badal-e-Suleh in a case of Qatl-i-Amd, punishable under section 302(a), P.P.C., as Qisas and this right can also be exercised with permission of Court in a case in which punishment of death is awarded as Tazir under section 302(b) but the concept of Afw and Badl-e-Suleh under the existing law has not been made applicable to a case under section 396, P.P.C., in which death is awarded for murder taken place during the course of committing dacoity and thus the Court cannot competently give effect to a compromise in a non-compoundable offence against the policy of law. The petitioner in the present case was awarded sentence of death under section 396, P.P.C. for murder as Tazir which had taken place during the course of committing dacoity and the offence under section 396, P.P.C., being not compoundable, the provision of sections 309 and 310, P.P.C., read with 338(E), P.P.C., could not be made applicable to give effect to a compromise in a non-compoundable offence under the law. In the matter of interpretation and application of provision of Chapter XVI, P.P.C., in respect of the offences mentioned therein or the matters ancillary or akin thereto Court can seek guidance from Holy Quran and Sunnah as provided in section 338(F), P.P.C., but the Court cannot bring a non-compoundable offence within the purview of section 345, Cr.P.C., by virtue of section 338-F, P.P.C., for the purpose of compounding it on the basis of compromise. This is settled law that Courts can interpret the provisions of law but cannot change or substitute such provisions and also cannot go beyond the wisdom of law. The contention of the learned counsel that the compromise between the parties at least could be treated a mitigating circumstance for the purpose of lesser punishment, has also no substance. This Court while upholding the judgment of the High Court by virtue of which conviction and sentence awarded to the petitioner by the trial Court was maintained, has already dismissed the petition for leave to appeal. The present petition has arisen out of the proceedings in a miscellaneous application moved by the petitioner for his acquittal on the basis of his compromise with the legal heirs of the deceased, therefore, in these proceedings, it was not possible for the High Court to re-open the case on merits in exercise of its powers under section 561-A, Cr.P.C., and similarly this Court is not supposed to undertake such an exercise under Article 187 of the Constitution of Islamic Republic of Pakistan and consider the question relating to the quantum of sentence on the basis of compromise between the parties in such a heinous offence which is considered a crime against the Society."

M. Ashraf Bhatti and others v M. Aasam Butt and others (PLD 2006 SC 182)

"7. In view of the facts that parties have compromised the matter and compensation has already been received by the complainants therefore, permission is accorded to compound the offence under section 345(2), Cr.P.C. Now we would advert to examine whether in the cases like one in hand where brutal murder of two young boys has been committed when they were confined in judicial lock-up, in a shocking manner which has outraged the public conscience, the convicts are liable for punishment on the principle of Fasad-fil-Arz. The facts of the case and material available on record reveal that petitioners/convicts have committed crime in a brutal manner of the deceased who were confined in lock-up. Therefore, considering them sitting ducks, they took the law in their hands, without caring that police stations or Court premises are considered such places where law protects the life of citizens. Therefore, in exercise of

jurisdiction under section 311, P.P.C. the sentence of death of the two convicts namely Naheeb Butt alias Bhutto and Moazzam Butt is reduced from death to life imprisonment under section 302, P.P.C. and under section 7(b) of A.T.A. on both the counts. Similarly sentences awarded to Muhammad Aasam and Shahbaz alias Dodi for imprisonment of life under section 302(b), P.P.C. is reduced to 14 years and sentence awarded to them for life imprisonment under section 7(b) of A.T.A. is kept intact on both the counts with benefit of section 382-B of Cr.P.C., which has already been extended to them by the Lahore High Court. Remaining sentences awarded to them are kept intact. All the sentences shall run concurrently."

Muhammad Akhtar alias Hussain v The State
(PLD 2007 SC 447)

"2. The petitioner after having been unsuccessful in his attempts to secure his acquittal in the case initiated making efforts to effect a compromise with the complainant party and in this respect he submitted an application before the trial Court for his acquittal on the basis of the compromise. His this application was dismissed by the trial Court against which a writ petition was filed before the High Court. The case was remanded back by the High Court to the Anti-Terrorism Court (the trial Court) with the direction to give findings with regard to the compromise between the parties. This time the trial Court while allowing the compromise to the extent of charge under section 302(b), P.P.C., acquitted the petitioner from the said charge whereas his application to the extent of conviction and sentence on the charge under section 7 of the ATA, 1997 was dismissed. The petitioner again approached the High Court through a Constitution Petition questioning the legality of the order on the ground that the conviction and sentence of the petitioner under section 7 of the ATA, 1997 is the outcome of the main charge under section 302(b), P.P.C. and since the petitioner has already been acquitted from the said charge he is also entitled to be acquitted from the charge under section 7 of the ATA, 1997. However, his this plea was not accepted by the High Court and his writ petition was dismissed and now the present petition.

3. The learned counsel for the petitioner has vehemently contended, as submitted before the High Court, that after the acquittal of the petitioner under section 302, P.P.C. he was entitled to the acquittal under section 7 of the ATA, 1997 which is the offshoot of the main offence under section 302, P.P.C.

4. We have attended to his this contention. Whatever the nature or status of an offence but for the purposes of the compromise it will be seen as to whether the offence/the section of law for which the compromise is requested is compoundable under the law or not. The offences which are compoundable have been mentioned in section 345(1), Cr.P.C. Since the offence is under section 7 of the ATA, 1997 for which a death penalty has been prescribed does not find its mention in the aforesaid section in the category of the offences which are compoundable, and both the Courts below have rightly disallowed the compromise. In this respect reliance can be placed on the case of Muhammad Rawab v. The State 2004 SCMR 1170. The relevant extract from the judgment in which leave was granted in order to examine, inter alia, the following:--

> "2. ------- The question whether the Court can permit the parties to compound the offences which are not mentioned in section 345, Cr.P.C. specially when there is a bar under section 345(7) of Cr.P.C.

> for entertaining a compromise in the offences not mentioned in section 345, Cr.P.C."

The Court while dismissing the appeal held:--

> "3. ------- The pivotal question which needs determination would be as to whether parties can be allowed to compound the offences which are not compoundable by virtue of the provisions as contemplated in section 345, Cr.P.C. specially in view of the specific bar as mentioned in subsection (7) of section 345, Cr.P.C. There is no denying the fact that section 365-A, P.P.C. read with section 7(e) of the Anti-Terrorism Act, 1997 is not compoundable. The provisions as contained in section 345(7), Cr.P.C. have been couched in such a plain and simple language that there is hardly any scope for any interpretation except that a non-compoundable offence cannot be made compoundable by this Court for the simple reason that no amendment, deletion, insertion or addition could be made by this Court and it could only be done by the Legislature as this aspect of the matter falls in its exclusive domain of jurisdiction. The provisions as contained in section 345, Cr.P.C. cannot be stretched too far by including the non-compoundable offence therein under the garb of humanitarian grounds or any other extraneous consideration. The offences committed by the appellant are not of grave and alarming nature but the same are against the society as a whole and cannot be permitted to compound by any individual on any score whatsoever. It may be noted that tabulation of the offences as made under section 345, Cr.P.C. being unambiguous remove all doubts, uncertainty and must be taken as complete and comprehensive guide for compounding the offences. The judicial consensus seems to be that "The Legislature has laid down in this section the test for determining the classes of offences which concern individuals only as distinguished from those which have reference to the interests of the State and Courts of law cannot go beyond that test and substitute for it one of their own. It is against public policy to compound a non-compoundable offence, keeping in view the state of facts existing on the date of application to compound. No offences shall be compounded except where the provisions of section 345, Cr.P.C. are satisfied as to all matters mentioned in the section."

The aforesaid judgment was followed by this Court in another case, Ghulam Farid alias Farida v. The State PLD 2006 SC 53.

5. We have also considered the question of reduction of sentence in view of the compromise arrived at between the parties. Since the matter before us is not in the regular proceeding arising out of the conviction and sentences passed by the trial Court and his appeal before the High Court and then a petition before this Court but after the decision having been rendered by this Court dismissing the petition of the petitioner against the order of his conviction and sentence and while dismissing the petition by this Court, his conviction and sentences under section 302/34, P.P.C. and section 7 of the ATA,

1997 were kept intact. So once the findings have been given on merits by this Court, then it would not be appropriate to enter the merits of the case again to consider the reduction of sentence in an offence which is not compoundable. In this respect the relevant portion of paras. 4 and 5 of the judgment passed in the case of Ghulam Farid (supra) are reproduced hereinbelow:--

> "4. ------- There is no cavil to the proposition that the Courts at all levels without any legal impediment, while deciding the criminal cases on merits, in the regular proceedings, can consider the compromise of an offender with the victim or his legal heirs, as a mitigating circumstance for the purpose of question of sentence in a non-compoundable offence but after final disposal of a criminal matter, Courts cannot assume jurisdiction to re-open the case on merits in collateral proceedings arising out of miscellaneous application. The petitioner after losing the case on merits, before the trial Court, the High Court and also before this Court in regular proceedings moved an application to the Court of first instance for his acquittal on the basis of his compromise with the legal heirs of the deceased wherein he also made an alternate prayer of reduction in sentence ------
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> 5. ------- This is settled law that Courts can interpret the provisions of law but cannot change or substitute such provisions and also cannot go beyond the wisdom of law. The contention of the learned counsel that the compromise between the parties at least could be treated a mitigating circumstance for the purpose of lesser punishment, has also no substance. This Court while upholding the judgment of the High Court by virtue of which conviction and sentence awarded to the petitioner by the trial Court was, maintained, has already dismissed the petition for leave to appeal. The present petition has arisen out of the proceedings in a miscellaneous application moved by the petitioner for his acquittal on the basis of his compromise with the legal heirs of the deceased, therefore, in these proceedings, it was not possible for the High Court to re-open the case on merits in exercise of its powers under section 561-A, Cr.P.C., and similarly this Court is not supposed to undertake such an exercise under Article 187 of the Constitution of Islamic Republic of Pakistan and consider the question relating to the quantum of sentence on the basis of compromise between the parties in such a heinous offence which is considered a crime against the Society."

6. The findings of the Courts below by not granting permission to compound the offence under section 7 of the ATA, 1997 are in accordance with law and particularly in view of the bar as contained in subsection (7) of section 345, Cr.P.C. We find no illegality in the orders impugned herein and which does not deserve any interference. Resultantly we see no force in this petition, leave is declined and the petition dismissed."

Muhammad Nawaz v The State
(PLD 2014 SC 383)

"8. It is to be noted that the act of terrorism, though is interlinked with the principal offence i.e. 302(b), P.P.C., falls under a different provision of law i.e. section 6(2)(n) of ATA. Deceased Muhammad Mumtaz was on official duty at the time of the occurrence as it is evident from the statements of P.Ws. that he was in uniform and was causing arrest of nominated accused along with raiding police party but to terrorize the police the accused opened fire, which caused his (Muhammad Mumtaz) death and also created obstruction in the discharge of their duty. Sentence under section 302(b) attracts the provision of section 353, P.P.C., which he has already undergone. Thus, the offence under section 6(2)(n) of ATA also stands established against the petitioner, which provides the meaning of terrorism and any such action that falls within the meaning of said section, involving serious violence against a member of the police force, armed forces, civil armed forces, or a public servant. This offence stood established, in view of the facts and circumstances narrated hereinabove, particularly, accepting the conviction/sentence under section 302(b), P.P.C. as he has entered into compromise with the deceased, however as far as the second count of death sentence under section 7 ATA is concerned, it has got its own implications and is not compoundable under section 345 subsections (5) and (7) of Cr.P.C. This Court examined this very proposition in the case of Muhammad Rawab v. State (2005 SCMR 1170), reliance on which has also been placed by the Sessions Judge when the compromise under section 302(b), P.P.C. and 7 of ATA was submitted. Learned Special Judge gave effect the compromise only to the extent of 302(b), P.P.C., whereas compromise under section 7 ATA was not allowed to be compounded in view of the law referred to hereinabove.

9. However, this fact can also not be over sighted that in respect of murder of Muhammad Mumtaz, Constable, the petitioner was also sentenced to death and now the parties have compounded the offence under section 302(b), P.P.C. and according to the record compensation has also been paid. Therefore, question for quantum of sentence under section 7 of ATA can be examined in view of the judgment in the case of M. Ashraf Bhatti v. M. Aasam Butt (PLD 2006 SC 182) wherein after the compromise between the parties sentence of death was altered to life imprisonment.

10. It is to be noted that both the sentences i.e. death and life imprisonment are legal sentences, therefore, under the circumstances either of them can be awarded to him. Thus in view of the peculiar circumstances noted hereinabove, sentence of death under section 7 ATA, 1997 is converted into life imprisonment without extending benefit of section 382-B, Cr.P.C. as the same was not allowed by the trial Court, first appellate Court as well as by this Court in the judgment under review.

11. Accordingly, compromise between the parties is accepted to the extent of conviction under section 302(b), P.P.C. and the petitioner is acquitted of the charge. However, the death sentence under section 7 of ATA is converted into life imprisonment and the review petition is disposed of."

Shahid Zafar and 3 others v The State
(PLD 2014 SC 809)

"9. Insofar as the compounding of the offences is concerned by the appellants reached through compromise with the legal heirs of the deceased, it would be seen that Section 7 (a) of the Anti Terrorism Act, 1997 is not compoundable and hence the

learned High Court correctly dismissed such compromise applications. Even otherwise we are of the opinion that the cruel and gruesome murder of the deceased who had been begging for his life from the appellants certainly amounted to Fasad-Fil-Arz within the meaning of Section 311, P.P.C. and hence there could not be any question of acceptance of compromise between the parties. However having said as much we are also aware that in the case of Muhammad Nawaz (Supra) this Court had converted the sentence of death to that of life imprisonment under Section 7(a) of the Anti Terrorism Act 1997 where the legal heirs had compounded the matter with the accused as in the present case. Consequently we would partly allow Criminal Appeal No.8-K of 2014 by directing that the sentence of death imposed upon the appellant Shahid Zafar be reduced to life imprisonment."

Kareem Nawaz Khan* v *The State
(2019 SCMR 1741)

"3. Karim Nawaz Khan petitioner had allegedly murdered his sister, a brother and a sister-in-law by firing at them with the use of a Kalashnikov in an incident taking place at about 12.00 Noon on 03.06.2007 inside the house of Muhammad Khan complainant in village Whandi Shiapur in the area of Police Station Moch, District Mianwali in the backdrop of a motive based upon a dispute between the parties over some ancestral property. With these allegations the petitioner was booked in case FIR No 101 registered at the above mentioned Police Station soon after the incident and after a regular trial the petitioner was convicted on 3 counts of an offence under section 302(b), P.P.C. and was sentenced to death on each count and to pay compensation and *Diyat* to their heirs of the deceased. The petitioner was also convicted by the trial court for an offence under section 7(a) of the Anti-Terrorism Act, 1997 and even on that count of the charge he was sentenced to death and to pay fine. The petitioner was additionally convicted by the trial court for an offence under section 21-L of the Anti-Terrorism Act, 1997 and for the said offence he was sentenced to rigorous imprisonment for five years and to pay fine. The petitioner challenged his convictions and sentences before the High Court through an appeal which was dismissed and all his convictions and sentences recorded by the trial court were upheld and confirmed by the High Court. Thereafter the petitioner approached this Court through Criminal Petition No. 1245-L of 2010 but the said petition was also dismissed by this Court on 05.06.2012 and leave to appeal was refused to him. Hence, the present review petition before this Court.

4. On 05.06.2012 this Court had dismissed Criminal Petition No. 1245-L of 2010 after attending to the merits of the petitioner's case and it had been held by this Court that the courts below were justified in convicting and sentencing the petitioner and in upholding and confirming his sentences. Through the present review petition it has been brought to this Court's notice that after passage of the said order by this Court upholding and maintaining the petitioner's convictions, and sentences the heirs of all the three deceased had entered into a compromise with the petitioner which compromise was presented before the trial court, i.e. the Anti-Terrorism Court, Sargodha and vide judgment dated 19.02.2014 the learned Judge, Anti-Terrorism Court, Sargodha was pleased to accept the said compromise on all the three counts of the charge under section 302(b), P.P.C. whereas the said compromise was rejected to the extent of the petitioner's convictions and sentences for the offences under sections 7(a) and 21-L of the Anti-Terrorism Act, 1997. We have gone through

the said order passed by the trial court on 19.02.2014 and have noticed that the trial court had felt satisfied regarding genuineness and completion of the acclaimed compromise between the parties. Through the present review petition the learned counsel for the petitioner has urged that in view of the compromise affected between the parties *vis-à-vis* the offences under section 302(b), P.P.C. the sentence of the petitioner for the offence under section 7(a) of the Anti-Terrorism Act, 1997 may be reduced from death to imprisonment for life. In support of this submission the learned counsel for the petitioner has referred to the cases of *Muhammad Nawaz v. State (PLD 2014 SC 383)*, *Shahid Zafar and 3 others v. The State (PLD 2014 SC 809)* and *M. Ashraf Bhatti and others v. M. Aasam Butt and others (PLD 2006 SC 182)*. The learned Additional Prosecutor-General, Punjab appearing for the State has submitted that in above mentioned precedent cases this Court had indeed utilized a compromise between the parties for reduction of a convict's sentence of death to imprisonment for life on a charge under section 7(a) of the Anti-Terrorism Act, 1997 and, thus, the matter of reduction of the petitioner's sentence on such score in the present case lies within the discretion of the Court.

5. After hearing the learned counsel for the parties and going through the record we have noticed that the appellant was very closely related to all the three murdered persons in this case, i.e., he was a brother of two of the deceased and a brother-in-law of the third deceased and the incident in issue had taken place because of a dispute between the parties over some ancestral property. According to the prosecution itself there was no enmity between the parties and the present incident had taken place half an hour of an earlier incident wherein the petitioner and the deceased and some others had quarreled with each other while discussing the matter of ancestral property. It could, thus, be said that in the absence of any on-going enmity between the parties the present occurrence had taken place because of some very recent provocation offered to the petitioner by the complainant party while discussing the issue regarding ancestral property. It may, therefore, be a case not of grave and sudden provocation but a case which was based upon some provocation recently offered to the petitioner although the same was not sudden. In a case of such a situation this Court has held that the least that a Court can do in such a case is to reduce the sentence of death to imprisonment for life and a reference in this respect may be made to the case of *Ghulam Abbas v. Mazhar Abbas and another (PLD 1991 SC 1059)*. There is an additional factor available in this case for reduction of the petitioner's sentence of death to imprisonment for life and that is that a valid compromise had been arrived at between the parties which has already been allowed by the trial court *vis-à-vis* three counts of the charge under section 302(b), P.P.C. In the cases of *Muhammad Nawaz v. The State (PLD 2014 SC 383)*, *Shahid Zafar and 3 others v. The State (PLD 2014 SC 809)* and *M. Ashraf Bhatti and others v. M. Aasam Butt and others (PLD 2006 SC 182)* this Court has already considered a valid and accepted compromise in the coordinate offence to be a valid ground for reduction of a sentence of death into imprisonment for life on the charge of terrorism or of a non-compoundable offence.

6. For what has been discussed above this review petition is allowed, the order under review dated 05.06.2012 passed by this Court in Criminal Petition No. 1245-L of 2010 is recalled, the said petition is converted into an appeal and the same is partly allowed with the result that the sentence of death passed against the petitioner/appellant for the offence under section 7(a) of the Anti-Terrorism Act, 1997 is converted into a sentence of

> imprisonment for life. The order passed by the trial court regarding payment of fine on that charge is maintained but it is ordered that in default of payment of fine he shall undergo simple imprisonment for six months. On account of a valid compromise having been arrived at between the heirs of the three deceased and the present appellant, which compromise had already been allowed by the trial court, his convictions and sentences on three counts of the charge under section 302(b), P.P.C. are set aside and he is acquitted of the said counts of the charge. The appellant has already served out his sentence of imprisonment for the offence under section 21-L of the Anti-Terrorism Act, 1997 which shall be deemed to have run concurrently with his other sentence of imprisonment. The appellant shall be allowed the benefit under section 382-B, Cr.P.C. as far as his reduced sentence under section 7(a) of the Anti-Terrorism Act, 1997 is concerned. This review petition and the appellant's petition converted into an appeal are disposed of in the terms noted above."

5. The situation is altogether different in cases where the convictions and sentences of convicts have already attained finality after decision of their review petitions by this Court. Order XXVI Rule 9 of the Supreme Court Rules, 1980 provides as follows:

> "After the final disposal of the first application for review no subsequent application for review shall lie to the Court and consequently shall not be entertained by the Registry."

There is, thus, no scope for maintainability of a second or subsequent review petition before this Court after the first review petition has been decided. It is sometimes argued that in such a situation, particularly in a case of extreme hardship, this Court may attend to the matter in exercise of its jurisdictions under Articles 184(3) or 187 of the Constitution or may resort to revisiting the earlier order or judgment in order to safeguard the interests of justice but such arguments have consistently been rejected by this Court in the past. In many previous cases this Court has consistently held that after exhausting the review jurisdiction of this Court a party to a case cannot invoke Articles 184(3) or 187(1) of the Constitution for reopening the same case. It has also been held by this Court that the question whether an interpretation of law in any earlier order or judgment of this Court needs to be revisited or not is a question to be decided by this Court upon its own initiative and no party to a case or any other interested person can approach this Court for revisiting its earlier

orders or judgments. The following precedent cases may be referred to in this respect:

Khalid Iqbal and 2 others* v *Mirza Khan and others
(PLD 2015 SC 50)

> "12. The question of maintainability of the 2nd Criminal Review Petition on the ground that this Court has to do complete justice by invoking Article 187(1) of the Constitution is also misconceived. The provisions of Article 187(1) cannot be attracted in the present case, as this Court has already recorded findings against the petitioner by the Judgment dated 28-2-2001, against which review was also dismissed and there was no *'lis'* pending before this Court warranting exercise of its jurisdiction under Article 187(1) of the Constitution, besides Rule 9 of the Order XXVI of the Supreme Court Rules, bars 2nd Review Petition. There is a distinction between right of a party to approach the Court and jurisdiction of the Court to do complete justice on its own. Once this Court has finally determined the right of the petitioner in the judgment dated 28-2-2001, holding him guilty, the petitioner through 2nd Review Petition, cannot reagitate it. If such a Review Petition is allowed to be entertained, it will land in a situation where findings of this Court against a party will never attain finality.
>
> 13. This, however, does not mean that the jurisdiction of this Court is barred by any restriction placed by the Constitution; there is no Article in the Constitution which imposes any restriction or bar on this Court to revisit its earlier decision or even to depart from them, nor the doctrine of stare decisis will come in its way so long as revisiting of the judgment is warranted, in view of the significant impact on the fundamental rights of citizens or in the interest of public good. This issue was fully comprehended and answered in the case titled *Regarding pensionary benefits of the Judges of Superior Courts from the Date of their respective retirements, irrespective of their length of service as such Judges* (PLD 2013 SC 829 at page 993). The relevant portions are reproduced herein below:--
>
> > "3. My learned brother has exhaustively dealt with the question of maintainability, which is a threshold proposition of the matter, and in this behalf extensive reference to the case-law has also been made. I therefore have no intention to add any superfluity to that, however, my approach to the proposition is quite simple, plain and facile, in that, the Supreme Court of Pakistan is the apex Court of the country. It is the final, the utmost and the ultimate Court, inter alia, in relation to, (a) resolving disputes inter se the parties before it, (b) securing and enforcing the fundamental rights of the citizen/person, when those (rights) are in issue before the Court, in any of its jurisdiction, either original or appellate or suo motu, (c) the interpretation and the enunciation of the law of the land, (d) examining and adjudging the legislative Acts and the executive order/actions of the State, in the exercise of its power of judicial review, (e) the exercise of original jurisdiction as per the mandate of Article 184 of the Constitution, (f) the advisory jurisdiction within the parameter of Article 186 of the Constitution, (g) the review of its decision

(judgments) (see Article 188) (h) a special jurisdiction conferred upon this Court by any law. And above all the power to do complete justice (see Article 187). In terms of Article 189 of the Constitution, *"Any decision of the Supreme Court shall, to the extent that it decides question of law or is based upon or enunciates a principle of law, (emphasis supplied) be binding on all other courts in Pakistan"*. Moreover, according to Article 190 *"All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court"*.

4. The aforestated legal position explains and highlights the true magnitude and the supremacy of this Court in regard to the dispensation of justice in the country and the enunciation and the declaration of the law by it. As the law laid down by the (apex) Court, and the order(s) passed by it, being the paramount and ultimate in nature, has to be imperatively and mandatorily followed, obeyed and adhered to by all the concerned. Reading Articles 189 and 190 conjointly, and while keeping in view the scheme of the Constitution, the very purpose, the pivotal position and the status of this Court (prescribed above), it is expedient that correct law should be pronounced by the apex Court. And pursuant to the above object and due to the venerated position of this Court, the Court is cumbered with, inviolable responsibility, and a sacred duty, to interpret, declare and enunciate the law correctly, so that it should be followed, obeyed and adhered to purposively and in letter and spirit, by all the other organs of the State (including all other Courts in Pakistan) strictly inconsonance with the true aim of the aforementioned Articles. It may be pertinent to mention here, that any invalid enunciation of law, shall contravene and impugn the very character, and attribute(s) of this Court and such bad/wrong law shall cause drastic adverse effects on the socioeconomic, political, geographical, ethnic, cultural aspects and dynamics of the nation, the society, the people at large and the State in presentee or in futurio. In the above context, reference can also be made to Article 4 of the Constitution which enshrines (inter alia) an inalienable right of every citizen to be dealt with in accordance with the law, obviously this shall mean the law that is, correctly laid down by this Court. As it is a cardinal principle of justice, that the law should be worn by the Judge in his sleeves and justice should be imparted according to the law, notwithstanding whether the parties in a lis before the Court are misdirected and misplaced in that regard. Therefore, if any law which has been invalidly pronounced and declared by this Court, which in particular is based upon ignorance of any provisions of the Constitution, and/or is founded on gross and grave misinterpretation thereof; the provisions of the relevant law have been ignored, misread and misapplied; the law already enunciated and settled by this Court on a specific subject, has not been taken into account, all this, inter alia, shall constitute a given judgment(s) as per incuriam; and inconsistent/conflicting decision

of this Court shall also fall in that category. Such decision undoubtedly shall have grave consequences and repercussions, on the State, the persons/ citizens, the society and the public at large as stated above. Therefore, if a judgment or a decision of this Court which is found to be per incuriam (note: what is a judgment per incuriam has been dealt with by my brother), it shall be the duty of this Court to correct such wrong verdict and to set the law right. And the Court should not shun from such a duty (emphasis supplied). For the support of my above view, I may rely upon the law laid down in the dicta *Lt. Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Government of Pakistan, Karachi and others* (PLD 1962 SC 335 at page 340):--

> *"Where, however, there is found to be something directed by the judgment of which review is sought which is in conflict with the Constitution or with a law of Pakistan, there it would be the duty of the Court, unhesitatingly to amend the error. It is a duty which is enjoined upon every Judge of the Court by the solemn oath which he takes when he enters upon his duties, viz., to "preserve, protect and defend the Constitution and laws of Pakistan" But the violation of a written law must be clear."*

M. S. Ahlawat v. State of Haryana and another (AIR 2000 SC 1680):--

> *"15. To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience."*

Bengal Immunity Co. Ltd., v. State of Bihar and others (AIR 1955 SC 661):--

> *"19. Reference is made to the doctrine of finality of judicial decisions and it is pressed upon us that we should not reverse our previous decision except in cases where a material provision of law has been overlooked or where the decision has proceeded upon the mistaken assumption of the continuance of a repealed or expired statute and that we should not differ from a previous decision merely because a contrary view appears to us to be preferable.*
>
> *It is needless for us to say that we should not lightly dissent from a previous pronouncement of this court. Our power of review, which undoubtedly exists, must be exercised with due care and caution and only for advancing the public well being in the light of the*

> *surrounding circumstances of each case brought to our notice but we do not consider it right to confine our power within rightly fixed limits as suggested before us.*
>
> *If on a re-examination of the question we come to the conclusion, as indeed we have, that the previous majority decision was plainly erroneous then it will be our duty to say so and not to perpetuate our mistake even when one learned Judge who was party to the previous decision considers it incorrect on further reflection (emphasis supplied by me).*

In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta (AIR 1967 SC 997) it is held:-

> *"If the aforesaid rule of construction accepted by this Court is inconsistent with the legal philosophy of our Constitution, it is our duty to correct ourselves and lay down the right rule (emphasis supplied by me). In constitutional matters which affect the evolution of our policy, we must more readily do so than in other branches of law, as perpetuation of a mistake will be harmful to public interests. While continuity and consistency are conducive to the smooth evolution of the rule of law, hesitancy to set right deviations will retard its growth. In this case, as we are satisfied that the said rule of construction is inconsistent without republican polity and, if accepted, bristles with anomalies, we have no hesitation to reconsider our earlier decision."*

The question, however, shall be as to how this duty should be discharged and the object of correcting the wrong law, and setting it (the law) right should be achieved. One of the obvious ways of doing so is, when a party to the lis seeks review of the wrong judgment in terms of Article 188 of the Constitution. But what, if that remedy is not availed for any reason, or even if availed by the concerned, is discarded by the Court (again by committing an another wrong). Whether thereafter, such a wrong decision on the point of law, cannot be remedied and interfered with, revisited or set aside at all or in other words, even if a judgment which is patently per incuriam, infinitely should be left outstanding, allowing it to become the liability of this Court and our legal/judicial system, for all future times. And the (this) Court and the system should be fettered by it, and held as a captive thereto, leaving it intact to pervade and permeate serious prejudice in perpetuity to the persons/ citizens of the country and even the State,

> compelling them, to be dealt with by a wrong/invalid law, despite it having come to the notice of the Court, through any means whatsoever, that such decision suffers from patent and gross vice, and it is vividly a judgment per incuriam by all references. The answer is "No". In my candid view the approach to leave such a decision to stay intact shall be ludicrous and shall lead to drastic effects as indicated above. Rather in such a situation this Court, having special position in our judicature (judicial system as highlighted above) shall have the inherent, intrinsic and inbred power (jurisdiction) vested in it, (a) to declare a judgment per incuriam; (b) decline to follow the same as a valid precedent, (c) and/or to set it aside. For the exercise of jurisdiction in that regard and for the discharge of the duty as mentioned earlier, it is absolutely irrelevant and immaterial vide (via) which source it (decision) has come to the notice of the Court. The Court once attaining the knowledge of such a blemished and flawed decision has the sole privilege, to examine the same and to decide about its fate, whether it is per incuriam or otherwise. In this context, it may be mentioned, for example, if while hearing some case, it is brought to the attention of the Court by the member(s) of the Bar; or during the hearing of any matter, the Court itself finds an earlier judgment to be per incuriam; or if a Judge (Judge of this Court) in the course of his study or research, comes across any judgment which in his view is per incuriam or if any information through the Registrar of the Court is passed on to the honourable Chief Justice of the Court or to any other Judge (of this Court), by any member of the Bar, or the member of the civil society (any organization/group of the society) that a judgment is per incuriam (note: without the informant having any right or locus standi of hearing or the audience, until the matter is set out for hearing in the Court and the Court deems it proper to hear him), the Court in exercise of its inherent suo motu power and the duty mentioned above (emphasis supplied) shall have the due authority and the empowerment to examine such a judgment, in order to ascertain and adjudge if the law laid down therein is incorrect or otherwise. And if the judgment is found to be per incuriam, it shall be dealt with accordingly. In such a situation (as earlier stated) it shall not be of much significance, as to who has brought the vice of the judgment to the notice of the Court or through which channel it has reached there. Rather, the pivotal aspect, the object, the concern and the anxiety of this Court should be to examine the judgment and if it is per incuriam to set the law right with considerable urgency."

On perusal of the paragraphs referred to hereinabove, we can safely reach a conclusion that this Court has absolute powers to re-visit, to review and or to set aside its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. The Powers of this Court to exercise its inherent jurisdiction under the above referred Articles of the Constitution are not dependant upon an application of a party.

14. The learned counsel has contended that the petitioner has the fundamental rights, under Articles 9 and 25 of the Constitution to seek protection of his liberty as a citizen of this country. We are not persuaded by this contention of the learned Advocate Supreme Court of the petitioner. The protection of the term "liberty" used in this Article would not cover the petitioner, who was convicted by this Court, and had exhausted all the legal remedies available in law, against his conviction and sentence. The findings of this Court against the petitioner had attained finality, which could not be undone on the basis of the judgment in the case of *Dilawar Hussain* (supra) which came, later in time, and had distinct facts. Therefore, the contention of the learned Advocate Supreme Court that Article 9 of the Constitution protects the life and liberty of the petitioner is without force. As far as the discrimination under Article 25 of the Constitution is concerned, the petitioner has not been discriminated against at all. This Court has decided his case on the basis of the material produced at trial. The petitioner could not plead discrimination of lesser sentence by relying on the case of *Dilawar Hussain* (supra), as every case needs to be decided on its own merits and the decision of one case will not regulate the quantum of sentence in the other case, nor it could attract the term 'discrimination' as used in Article 25 of the Constitution.

15. For the aforesaid reasons, we hold that 2nd Criminal Review Petition of the petitioner is not competent and the judgment dated 28-2-2001, in Criminal Appeal No. 23/1997, and the order dated 6-3- 2008 in Criminal Review Petition No.12/2001, passed by this Court having attained finality, cannot be impugned once the petitioner has exhausted all his legal remedies. Mere delay on the part of executive to execute the sentence of the petitioner would not give him a right to approach this Court and have his decision reversed on the aforestated grounds."

Syed Shabbar Raza Rizvi and others* v *Federation of Pakistan, Ministry of Law and Justice Division through Secretary, Islamabad and others
(2018 SCMR 514)

"There is another aspect of the matter which is of considerable importance i.e. the maintainability of these petitions. In this context, it is held that the petitioners had the remedy of challenging the judgment, if they were aggrieved of the same, by filing review petitions, which they did attempted so to do but could not succeed. They were a party in *Khurshid Anwar Bhinder's case* (supra) and their respective submissions were rejected and the review applications were accordingly dismissed as being not maintainable; besides observing that the judgment impugned, being in the supreme national interest, there hardly appeared any justification for review. Further, the petitioners contested the contempt notices in *Justices (R) Iftikhar Hussain Chaudhry's case* (supra) and then Intra Court Appeals in *Justice Hasnat Ahmed Khan's case* (supra) but without any measure of success. All the points raised in the said cases/judgments have been re-agitated through the present petitions. In such a situation, the petitions under Article 184(3) are absolutely incompetent and not maintainable. Where a person has/had the opportunity of filing a review or appeal against a judgment, and either files a review/appeal and fails, or does not avail that opportunity, or fails to become a party in any pending review/appeal filed by another person against the same judgment, then he has no right to re-agitate the matter through a petition under Article 184(3) ibid. Article 184(3) ibid is a

constitutional provision which is meant for the purposes of enforcement of fundamental rights, where there is a question of public importance involved. It cannot be exercised as a parallel review jurisdiction by the court, especially when the remedy of review has already been availed or declined. Yes, a judgment of this Court can be considered to be *per incuriam* but it is for the Judges to revisit any such judgment, if and when pointed out by any person during the course of hearing of any other case. Such a finding would be premised on the Court finding the same judgment to be against any provision of the Constitution or the law, or the principle(s) already settled by a larger Bench of the Court. It is not the right of a person, who would have no *locus standi* under Article 184(3) of the Constitution, to file such a petition, particularly in the situation where the review jurisdiction has been invoked and the same (review) has been dismissed; thus, such judgment (under review) can never be challenged by virtue of filing independent proceedings under Article 184(3) of the Constitution. This would be an abuse of the process of law and is absolutely impermissible. Resultantly, we do not find any merit in these petitions which are accordingly dismissed."

Akhter Umar Hayat Lalayka and others v Mushtaq Ahmed Sukhaira and others
(2018 SCMR 1218)

"Second review is barred by law and no party can now approach this Court for a second review, however, this Court has absolute power to re-visit its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. This Power is not dependant upon an application of any party and it was so held in the case of *Khalid Iqbal v. Mirza Khan* (PLD 2015 SC 50), in the following words:-

> *"12. The question of maintainability of the 2nd Criminal Review Petition on the ground that this Court has to do complete justice by invoking Article 187(1) of the Constitution is also misconceived. The provisions of Article 187(1) cannot be attracted in the present case, as this Court has already recorded findings against the petitioner by the Judgment dated 28-2-2001, against which review was also dismissed and there was no 'lis' pending before this Court warranting exercise of its jurisdiction under Article 187(1) of the Constitution, besides Rule 9 of the Order XXVI of the Supreme Court Rules, bars 2nd Review Petition. There is a distinction between right of a party to approach the Court and jurisdiction of the Court to do complete justice on its own. Once this Court has finally determined the right of the petitioner in the judgment dated 28-2-2001, holding him guilty, the petitioner through 2nd Review Petition, cannot re-agitate it. If such a Review Petition is allowed to be entertained, it will land in a situation where findings of this Court against a party will never attain finality.*
>
> *13. This, however, does not mean that the jurisdiction of this Court is barred by any restriction placed by the Constitution; there is no Article in the Constitution which imposes any restriction or bar on this Court to revisit its earlier decision or even to depart from them, nor the doctrine of stare decisis will come in its way so long as revisiting of the judgment is warranted, in view of the significant*

> *impact on the fundamental rights of citizens or in the interest of public good. ... ...*
>
> *On perusal of the paragraphs referred to hereinabove, we can safely reach a conclusion that this Court has absolute powers to re-visit, to review and or to set aside its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. The Powers of this Court to exercise its inherent jurisdiction under the above referred Articles of the Constitution are not dependant upon an application of a party."*

The same view has been reiterated in a recent judgment dated 5.1.2018 passed in the case of *Syed Shabbar Raza Rizvi v. Federation of Pakistan* (2018 SCMR 514)."

6. In view of the legal position already declared by this Court in the above mentioned precedent cases the questions posed above are answered as follows:

> (i) Can a non-compoundable offence be treated as a compoundable offence for the purpose of recording an acquittal in respect of that offence if a coordinate compoundable offence committed in the same case has been compounded by the relevant parties?

It has already been clarified in many a case that the non-compoundable offence of terrorism is an offence distinct and independent from any other coordinate offence also committed in the same case including the offences under sections 302, 365-A, 396 and 460, PPC, etc. and a reference in this respect may be made to the cases of *Muhammad Amin v The State* (2002 SCMR 1017), *Muhammad Ali and others v The State and others* (PLD 2004 Lahore 554), *Muhammad Rawab v The State* (2004 SCMR 1170), *Muhammad Akhtar alias Hussain v The State* (PLD 2007 SC 447) and *Kareem Nawaz Khan v The State through PGP and another* (2016 SCMR 291). It is hereby held that an offence which the law declares to be non-compoundable remains non-compoundable even if in a coordinate compoundable offence a compounding takes place between the relevant parties and, therefore, despite any compounding of the coordinate compoundable offence an acquittal cannot be recorded in the non-compoundable offence on that sole basis.

(ii) Can the sentence passed in a non-compoundable offence be reduced on the ground that a coordinate compoundable offence committed in the same case has been compounded by the relevant parties?

It is declared that in an appropriate case, keeping in view the peculiar circumstances of the case, compounding of a coordinate compoundable offence may be considered by a court towards reduction of the sentence, within the permissible limits, passed for commission of a non-compoundable offence. It is further declared that consideration of this factor *vis-à-vis* reduction of the sentence passed for commission of the non-compoundable offence lies within the discretion of the court and cannot be treated as automatic or as a matter of course.

(iii) If the answer to question No. (ii) is in the affirmative then at what stage and by which court or forum reduction in the sentence passed in respect of a non-compoundable offence be ordered, if deemed warranted in the circumstances of the case?

It is clarified that in case of compounding of a coordinate compoundable offence reduction of a sentence passed or to be passed for commission of a non-compoundable offence may be considered on that ground by the following courts at the following stages of the case:

(i) by the trial court at the time of passing the sentence at the end of the trial; or

(ii) if compounding of the coordinate compoundable offence takes place at the appellate or revisional stage before a High Court or before this Court at the stage of petition for leave to appeal or appeal or review petition then a prayer for reduction of the sentence passed for commission of the non-compoundable offence may be made on that ground before the Court seized of the pending matter; or

(iii) if this Court has already passed a final order or judgment in a petition for leave to appeal or an appeal and no review petition has been filed so far then reduction of the sentence passed for the non-compoundable offence may be sought on the ground of compounding of the coordinate compoundable offence through filing of a review petition before this Court; or

(iv) if the remedy of filing of a review petition before this Court has already been exhausted then, there being no scope for filing of a second or subsequent review petition before this Court and a party to a case or anyone else interested in the matter being in no position to seek revisiting of an earlier order or judgment of this Court, the only remedy left for seeking reduction of the sentence passed for commission of a non-compoundable offence on the ground of compounding of a coordinate compoundable offence is to file a Mercy Petition before the worthy President of Pakistan who may, in his discretion, consider this aspect in the light of the judgments passed by this Court on the subject from time to time; or

(v) if the remedy of a Mercy Petition before the President has already been exhausted before compounding of the coordinate compoundable offence has taken place then after acceptance of the compromise by the competent court in respect of the coordinate compoundable offence the Superintendent of the relevant Jail shall, upon an initiative of the convicted prisoner, forward a fresh Mercy Petition to the President on behalf of that convicted prisoner seeking fresh consideration of the matter by him in respect of the sentence passed against the convicted prisoner for commission of the non-compoundable offence in the light of compounding of the coordinate compoundable offence committed by him. When seized of such a fresh Mercy Petition the President may, in his discretion, consider the

matter of the convicted prisoner's sentence passed for commission of the non-compoundable offence afresh in the light of the judgments passed by this Court on the subject from time to time.

7. The office is directed to fix the captioned appeals and petitions for hearing before appropriate Benches of this Court for their decision in terms of the legal position declared through the present judgment.

Chief Justice

Judge Judge

Judge Judge

Judge Judge

Announced in open Court at Islamabad on 11.10.2019.

Chief Justice

Islamabad
11.10.2019
Approved for reporting.
Arif