Stereo. HC JD A 38.

Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.16852 of 2023

Muhammad Nawaz alias Babar Majeed

Versus

Additional Sessions Judge/Ex-Officio Justice of Peace, Lahore, etc.

J U D G M E N T

Date of hearing:	**11.09.2025**
Petitioner by:	Mr. Yasir Munawar Cheema and Rao Abdul Jabbar Khan, Advocates
State by:	Syed Farhad Ali Shah, Prosecutor General Punjab Malik Umar Tahir Assistant Advocate General Mr. Fakhar Abbas, Deputy Prosecutor General Azam ASI, with record
Respondents by:	Mr. Muhammad Akram Qureshi, Advocate
Amicus Curiae	Barrister Karim Ullah Sraw

MUHAMMAD JAWAD ZAFAR, J.: **-** Through this petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 ("**Constitution**"), Muhammad Nawaz *alias* Babar Majeed ("**petitioner**") has assailed the *vires* of order dated 03.03.2025 ("**impugned order**") passed by the learned *ex-officio* Justice of Peace, Lahore ("**Justice of Peace**"), whereby petition under Section 22-A and 22-B of the Code of Criminal Procedure 1898 ("**Code**" or "**Cr.P.C**") filed by Muhammad Adil Hanif ("**respondent No. 3**"), seeking direction therein to respondent No. 2 to register first information report ("**FIR**" or "**crime report**") against the proposed accused mentioned therein, was accepted.

2. Brief facts giving rise to the instant petition are that respondent No. 3, who has been permanently residing in the United States of America ("**United States**") for several years, got instituted the petition for issuance of direction for registration of FIR against the present petitioner alleging therein that the petitioner, who is settled in the United States for over thirty years, and his acquaintance/associate, Nazeer Hussain ("**respondent No. 4**"), resident of the United States for nearly forty years, maintained business

relations with respondent No. 3. Their partnership pertaining to a wholesale business in New York eventually collapsed during the Covid-19 pandemic. Respondent No. 3 asserted that, in discharge of business obligations, the petitioner issued thirty-one cheques of American banks, which cheques, upon presentation before banks concerned situated in New York, got dishonoured due to the bank account being closed. It was further alleged therein that despite repeated demands, the petitioner failed to satisfy his financial liability, thereby committing a cognisable offence in terms of Section 489-F of the Pakistan Penal Code 1860 ("**PPC**"); therefore, a direction should be given to the station house officer ("**SHO**"), police station Ghalib Maret, Lahore, to register an FIR against the petitioner in terms of Section 154 of the Code.

3. On receipt of the petition, the learned Justice of Peace called for police comments. Superintendent of Police/Additional District Complaint Officer, Model Town Division, Lahore, tendered police comments wherein it was *inter alia* stated that respondent No. 3 had already departed for the United States on 09.03.2022 and the mobile number provided in his application for registration of FIR stood registered in the name of an unrelated individual. The report further stated that the petitioner had been settled in the United States for the last three decades, his associate respondent No. 4 for almost four decades, and respondent No. 3 himself was also permanently residing there. It was noticed that all three had been engaged in a business venture abroad, which eventually suffered losses during the Covid-19 pandemic and was closed down. It was also observed that the cheques in dispute were all issued in the United States, presented before the banks concerned in the United States, and the same got dishonoured there. The Investigating Officer, therefore, concluded that no incident had occurred within the territorial jurisdiction of police station Ghalib Market, Lahore, and further incorporated in the police comments that no cognisable offence was made out, recommending that the petition for issuance of direction for the registration of FIR be dismissed.

4. Despite the foregoing, the learned Justice of Peace, *vide* impugned order dated 03.03.2023, proceeded to allow the application of respondent No. 3 and while doing so, the learned Justice of Peace did not

take into consideration the police comments and held that Courts in Pakistan were competent to take cognizance of offences committed beyond the territorial limits of Pakistan when committed by Pakistani citizens. On such reasoning, the learned Justice of Peace concluded that the matter required formal investigation and consequently directed respondent No. 2 to register an FIR against the petitioner on the complaint of respondent No. 3.

5. Heard, perused.

6. Due to the intricacies of the questions of law involved in this case, assistance was sought from the learned Prosecutor General Punjab and the learned *amicus curiae* to appraise this Court on whether a person, who is a dual national, can be tried and convicted in Pakistan for an offence, the entirety of which occurred overseas and no consequences of the same followed in Pakistan. There are other questions of law which have been addressed in the following paragraphs.

7. Before doing so, it is imperative to note that under Section 22-A of the Code, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can obviously issue directions that the statement of the complainant be recorded under Section 154 of the Code;[1] and if not, then the learned Justice of Peace should refrain from issuing any direction.[2] Likewise, it is the bounden duty of the learned Justice of Peace to ensure that misuse of provisions of Sections 22-A and 22-B of the Code is curbed at its inception and petitions filed thereunder should not be entertained lightly or decided in a mechanical manner by issuing a direction to the police to lodge an FIR,[3] especially when the same is tainted with *malafide*. In the case of "*Khizer Hayat v. Inspector General of Police (Punjab), Lahore*",[4] the full bench of this Court emphasised that it was advisable for the Justice of Peace to call for "police comments" for the sole purpose and object of verifying the veracity of the claim and bringing true facts on record. Although it is not necessary to call for "police comments" in

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[1] See "*Syed Qamber Ali Shah v. Province of Sindh*" (**2024 SCMR 1123**).
[2] See "*Muhammad Bashir v. Station House Officer, Okara Cantt*" (**PLD 2007 Supreme Court 539**).
[3] See "*Munawar Alam Khan v. Qurban Ali Mallano*" (**2024 SCMR 985**).
[4] **PLD 2005 Lahore 470 (FB)**.

each and every case; however, where the Justice of Peace calls for "police comments", the same cannot be brushed aside or ignored. Where the Justice of Peace who proposed to air an order contrary to the "police comments", he is required to furnish tangible reasons for not relying on the "police comments".[5]

8. In light of the principles of law stated herein above, the material available on record was scrutinized and upon such perusal, it straightaway becomes evident that the business dealings in question were exclusively conducted in the United States, that the disputed cheques pertain to the American banks concerned and were also issued in the United States, and that they were presented and dishonoured there. It is nobody's case before this Court that the consequences ensued in Pakistan. According to the "police comments" available on record, all the private parties to the *lis* are permanent residents of the United States, who have been residing there for decades. To be precise, respondent No. 3 is a permanent resident of the United States, the petitioner himself has been residing there for more than three decades, and respondent No. 4 for nearly four decades. The petitioner is admittedly also a "dual national", which led to the framing of the question of law due to its intricacies and complexities.

9. Under the law, the legislature has enacted the provisions of Sections 3 and 4 of the PPC, as well as Section 188 of the Code. Originally, Section 4 of the PPC provided that '*(1) any Native Indian subject of Her Majesty in any place without and beyond British India; …*', but the provision was amended and at present, the wording of the provision is that '*(1) … any citizen of Pakistan …*'. Section 188 of the Code formerly read as '*When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India … he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found*' but the same was also amended. Section 188, as it stands now, states that '*When a citizen of Pakistan commits an offence at any place without any beyond the limits of Pakistan … he may be dealt with in respect of such offence as if it had been committed at*

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[5] See "*Bushara Ghias v. Justice of Peace/Additional District and Sessions Judge, Lahore*" (**2019 YLR 1299 Lahore**); "*Mureed Hussain v. Additional Sessions Judge/Justice of Peace Jampur*" (**2014 PCr.LJ 1146 Lahore**); and, "*Khalid Anwar v. Ex-Officio Justice Of Peace, Lahore*" (**2013 PCr.LJ 684 Lahore**).

any place within Pakistan at which he may be found'. In order, for these provisions, Sections 3 and 4 of the PPC read with Section 188 of the Code, to trigger, thereby granting courts in Pakistan extra-territorial jurisdiction, one of the *prerequisites* that the person in question is a "citizen" must be met. In the present *lis*, the petitioner is a "dual national". Therefore, a question arises as to whether a "dual national" will be deemed to be a "citizen" of Pakistan for the purposes of the aforementioned provisions of the law or not.

10. Status of a person as a "citizen" of Pakistan is determined by the Constitution, the Pakistan Citizenship Act 1951 ("**Citizenship Act**" or "**Act of 1951**"), and the National Database and Registration Authority Ordinance 2000 ("**NADRA Ordinance**" or "**Ordinance of 2000**"). According to Article 260 of the Constitution, a "citizen" has been defined as follows: '*260. Definitions. (1) In the Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say, "citizen" means a citizen of Pakistan as defined by law*'. The law being referred to is the Citizenship Act, which provides for various types of citizenship, including citizenship by birth under Section 4; citizenship by descent under Section 5; citizenship by migration under Section 6; and, citizenship by naturalisation under Section 9. Section 14 of the Citizenship Act titled "Dual citizenship of nationality not permitted" is germane, and upon bare perusal of the same, it is clear that, as a general rule, a Pakistani "citizen" who is also a citizen/ national of any other country shall lose his Pakistani citizenship unless he renounces his citizenship/ nationality of the other country. This, of course, is subject to the exceptions stipulated in subsections (1A), (2), (3), and (4) of Section 14 of the Citizenship Act. Subsection (3) of Section 14 of the Act of 1951 provides that if a person acquired "dual citizenship" of the United Kingdom or Colonies or of such other country as the Federal Government may, by notification in the official Gazette, specify in this behalf, the "dual citizen" will remain a Pakistani "citizen". Unless provided that he has renunciated his Pakistani citizenship in terms of Section 14A of the Citizenship Act. The Federal Government issued S.R.O. 581(I)/2002 dated 29.08.2002, published in the official gazette on 02.09.2002, to include the United States of America

as one of such countries to which subsection (1) of section 14 would not apply. In "*Syed Mehmood Akhtar Naqvi v. Federation of Pakistan*",[6] it was held that '*We may clarify that section 14(1) of the Citizenship Act, 1951, confers upon Pakistani citizens the right to hold the citizenship of certain other countries without having to forego their Pakistani citizenship. The right, therefore, of Pakistani citizens to hold dual citizenship, as per law, remains very much a statutory right vested in them*'. The judgement of "*Syed Mehmood Akhtar Naqvi v. Federation of Pakistan*"[7] was cited with approval in "*Muhammad Ibrahim Shaikh v. Government of Pakistan*".[8]

11. Further, the NADRA Ordinance was promulgated to facilitate the registration of all persons and for the establishment and maintenance of database, data warehouses, networking, interfacing of databases, and related facilities. The purpose behind the enactment of the NADRA Ordinance and Authority was to register persons and classes thereof, including citizens.[9] NADRA under Sections 10, 11, 12, and 13 of the Ordinance of 2000 is required to issue National Identity Card (NIC), Pakistan Origin Card (POC), Overseas Identity Card (OIC), and Alien Registration Card (ARC), subject to the fulfilment of the conditions stipulated therein. A plain reading of these provisions makes it evident that a NIC, POC, OIC, and ARC are only to be issued to citizens of Pakistan and serve as an acknowledgement by the State that the holder is to be treated as a "citizen" of Pakistan, unless his or her citizenship is revoked under the Citizenship Act or otherwise. Be that as it may, it was clarified in "*Saira Bibi v. Muhammad Hafeez*",[10] that the question of determination of "citizenship" of a person remains the exclusive domain of the Citizenship Act and NADRA has no power to determine the same.

12. Accumulative reading of the aforementioned provisions of the law provides that criminal courts in Pakistan have extra-territorial jurisdiction over Pakistani "citizens" in respect of acts committed by them while being overseas. The condition precedent is that the accused must be a

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[6] **PLD 2012 Supreme Court 1089**.
[7] *Ibid*.
[8] **PLD 2019 Supreme Court 133**.
[9] See "*Kainat Akhtar v. Regional Headquarter NADRA*" (**PLD 2016 Lahore 393**).
[10] **2025 LHC 5536**.

"citizen" of Pakistan at the time of commission of the alleged offence.[11] The next criterion is that the accused must be "found" in Pakistan. In "*Empress v. Maganlal*",[12] while interpreting the word "found" in Section 188 of the Code, it was opined that it was used to confer the jurisdiction on the court of a place where the accused is actually found, i.e., produced before the court and not where a person is discovered. In other words, it would mean that an accused may be discovered by the police at a place not within the jurisdiction of the court inquiring or trying, but that is not the place contemplated by Section 188 of the Code. For the purpose of jurisdiction, it would be the court where he is actually produced or appears, which can be said to have found him. The aforesaid decisions were referred to and relied upon in "*Emperor v. Vinayak Damodar Savarkar*",[13] and "*Om Hemrajani vs State Of U.P. & Anr*".[14] In addition thereto, under first *proviso* of the provision *ibid*, sanction/certificate of the political agent or the Government is required for holding an inquiry or trial,[15] while through the second *proviso* to Section 188 of the Code, the legislature has placed an embargo that any proceedings taken under this provision would be a bar on subsequent proceedings under the Extradition Act 1972 ("**Extradition Act**"). Nonetheless, the fact remains that Section 188 of the Code only deals with procedure and does not make it a substantive offence to do an act which would be an offence if committed in Pakistan. The substantive offence would be those attracted through the operation of Section 3 and 4 of the PPC. It follows from the above that only offences which are punishable under the PPC would confer extra-territorial jurisdiction on the courts of Pakistan, and not otherwise. In "*Sheikh Haider v. Syed Issa*",[16] Madhya Pradesh High Court held that the words of Section 4 of the Indian Penal Code 1860 ("**IPC**"), which is *pari materia* to Section 4 of the PPC, postulate the existence of a law that an act constituting an offence in India shall also be an offence when committed outside India. Thus, taking part in a marriage which is prohibited by the Indian Child Marriage Restraint Act 1929

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[11] See "*Central Bank of India v. Ram Narian*" (**AIR 1955 Supreme Court 36**).
[12] **ILR (1882) 6 Bom 622**.
[13] **ILR (1911) 35 Bom 225**.
[14] **2005 (1) SCC 617**.
[15] See "*Muhammad Zubair v. Federation of Pakistan*" (**PLD 2014 Islamabad 31**).
[16] **ILR (1939) Nag 241**.

("**Indian CMRA**") by a "citizen" of India beyond India would not be an offence which can be punished in India. Reason being that the offence(s) under the Indian CMRA were not punishable under the IPC.

13. It appears from the deliberations made herein above that once a Pakistani "citizen", and a "dual citizen" remains a Pakistani "citizen", has been found in Pakistan, who is alleged to have committed an offence under the PPC, the Courts in Pakistan will have extra-territorial jurisdiction to try him for the said offence. When Section 188 of the Code, and Section 3 and 4 of the PPC are read in conjunction, the scheme underlying these provisions is to dispel any objection or plea of want of jurisdiction at the behest of a "fugitive" who has committed an offence in any other country and absconds therefrom to seek refuge in Pakistan to avoid penal consequences of his or her overt act. Paramount to take into consideration that the much neglected provision of Section 189 of the Code is to be read together with Section 188 of the Code for the latter to become operational. Section 189 of the Code states that when any offence as referred to in Section 188 is being inquired into or tried, the Government may '*direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial*'. The legislative intent, when Section 189 is read together with the second *proviso* to Section 188, as well as the term "political agent" in the first *proviso*, who maybe one of a "treaty state" under Section 3 of the Extradition Act or "non-treaty state" in terms of Section 4 thereof, along with the intentional deployment of the term "may" in the main body of Section 188 of the Code leads this Court to the inescapable conclusion that only offences mentioned in the Schedule appended with the Extradition Act can be inquired into and tried by Pakistani courts by creating legal fiction and granting the court extra-territorial jurisdiction. Had the intention of the legislature been otherwise, there would not have been any need for stating '*he may be dealt with*' in Section 188, on the contrary, the legislature could have easily scribed that he "shall" be dealt with. Consequently, it is held that the operation of these provisions, through the embargo placed in the second

proviso, is restricted to offences mentioned in the Extradition Act[17] and only those "fugitives" who have committed an offence overseas and are seeking refuge in Pakistan can be tried by Pakistani Courts while invoking the provisions *supra*.

14. Resultantly, since the dispute arose wholly in the United States, with no consequences ensuing in Pakistan, and there is no material available on record that the matter was ever reported to the authorities concerned in the United States and the petitioner absconded to Pakistan as a means of seeking refuge from the law enforcement agencies, therefore, the very foundation for a police station in Pakistan to register the crime report and investigate the same is lacking because the element of "found" squarely missing. As such, although the offence alleged against the petitioner is punishable under the PPC but since the same finds no mention in the Schedule appended with the Extradition Act, therefore, the same is not covered under Section 188 of the Code.

15. Besides, in the given circumstances, it is apparent from perusal of the application and the petition for issuance of direction for the registration of FIR that these are manifestly tainted with *malafide* because respondent No. 3 has attempted to deploy the machinery of the criminal justice system in Pakistan, while he and the proposed accused persons are permanent residents of a foreign country for over three decades and the machinery of law was sought to be set into motion over a dispute which occurred in its entirety in a different country, especially when no such complaint was made to any authority in the United States, which fact was not disputed before this Court and stood admitted by the parties. No plausible logical or legal justification or explanation has been provided by respondent No. 3 for avoiding reporting the matter to the authorities concerned in the United States or invoking the remedies available at his recourse in the United States for the redressal of his alleged grievance. Based on the above, it can safely be concluded that the sole object of respondent No. 3 was not to obtain a legitimate criminal remedy but to misuse Pakistan's criminal process as a means of exerting pressure and

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[17] See Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *Indian Penal Code*, 36th ed. (Haryana, India: Lexisnexis, 2021).

harassing the petitioner. At the cost of reiteration, as stated hereinabove, *malafide* is a standalone ground for dismissal of a petition under Section 22-A(6) of the Code.[18] In addition thereto, the learned Justice of Peace called for "police comments", wherein it is categorically stated that the police station concerned lacked territorial jurisdiction, but he failed to furnish any cogent reason in the impugned order for ignoring the "police comment", in sheer contradiction of the law laid down by this Court.[19]

16. In view thereof, this petition is hereby **accepted** and the impugned order dated 03.03.2025 passed by the learned *ex-officio* Justice of Peace, Lahore is **set aside**.

(MUHAMMAD JAWAD ZAFAR)
JUDGE

Approved for Reporting

JUDGE

Announced on 11.09.2025,
completed and singed on 29.09.2025.
*Ejaz/**

[18] See "*Munawar Alam Khan v. Qurban Ali Mallano*" (**2024 SCMR 985**).
[19] See "*Bushara Ghias v. Justice of Peace/Additional District and Sessions Judge, Lahore*" (**2019 YLR 1299 Lahore**); "*Mureed Hussain v. Additional Sessions Judge/Justice of Peace Jampur*" (**2014 PCr.LJ 1146 Lahore**); and, "*Khalid Anwar v. Ex-Officio Justice Of Peace, Lahore*" (**2013 PCr.LJ 684 Lahore**).