

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Writ Petition No.2496/2019.**

Ansar Mehmood

Versus

Judicial Magistrate P.S. Industrial Area, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
.	04.07.2019.	Raja Habib ur Rehman, Advocate for petitioner.

Through this writ petition the petitioner has  
prayed for the following relief:-

*That instant writ petition may be accepted and a declaration may kindly be issued that respondent No.1 had not vested power to attest a compromise agreement regarding civil lis pending in different courts and the attestation is in contravention to section 35 and 36 of the Prisoner Act, 1900 and consequently the said agreement may be declared as null, void abinitio and having no effect on the civil rights of the petitioner.*

2. Learned counsel for the petitioner *inter-alia* contends that petitioner is accused in case FIR No.132, dated 15.03.2018, U/S 506, 380, 447, 448, 148, 149, 420, 468, 467, 471, 109 PPC, P.S. Industrial Area, Islamabad lodged on the complaint of respondent No.2 Mst. Farida Haroon and during his judicial custody an application was filed by Mr. Khalid Ali Khokhar, Advocate for recording compromise after obtaining attested Vakalatnama from jail administration; that petitioner was summoned by the Judicial Magistrate, Section 30 (West), Islamabad on 02.04.2019 and compromise deed

was executed in the Court, as a result whereof, petitioner's suit for possession through specific performance dated 29.08.2016 pending before the Court of Mr. Shoukat Rehman, Civil Judge (West), Islamabad was dismissed as withdrawn and petitioner was granted post-arrest bail by the Court of Judicial Magistrate Section 30 (West), Islamabad on 04.04.2019 in the above mentioned criminal case; that a fraud has been committed in the Court as petitioner has not appointed Mr. Khalid Ali Khokhar, Advocate as counsel, nor Judicial Magistrate is authorized to record any compromise and all the proceedings conducted by the said Magistrate are illegal qua the rights of petitioner and the compromise as well as withdrawal of civil suit is illegal.

3. Arguments heard, record perused.

4. Perusal of record reveals that petitioner was arrested in criminal FIR No.132, dated 15.03.2018, U/S 506, 380, 447, 448, 148, 149, 420, 468, 467, 471, 109 PPC, P.S. Industrial Area, Islamabad registered on the complaint of Mst. Farida Haroon sister of deceased namely Fayyaz Gul whose property has allegedly been misappropriated by the petitioner. The petitioner was summoned by the Court of Mian Muhammad Azhar Nadeem, Judicial Magistrate Section 30 (West), Islamabad on the application of petitioner filed through Mr. Khalid Ali Khokhar, Advocate for recording of compromise. The power of attorney was duly attested

by the jail authorities, placed on record which shows that Mr. Khalid Ali Khokhar, Advocate was appointed as counsel and compromise was executed in the Court in presence of witnesses, whereby petitioner was given benefit of concession of post-arrest and in lieu thereof petitioner withdrew his suit for possession through specific performance dated 29.08.2016 pending before the Court of Mr. Shoukat Rehman, Civil Judge (West), Islamabad. The said civil suit was dismissed as withdrawn on the basis of compromise deed and petitioner was granted post-arrest bail in the above mentioned criminal case FIR No.132/2018 on 04.04.2019.

5. The entire record reveals that petitioner after grant of post arrest bail on 04.04.2019, filed instant petition while disowning the compromise on 02.07.2019 after elapse of three months approximately and as such there is no legal justification for the delay, which has been consumed by the petitioner for initiation of legal remedy.

6. Learned counsel for the petitioner has been confronted regarding the maintainability of instant writ petition especially when his entire case revolves around fraud committed in the judicial proceedings titled Ansar Mehmood Vs. Fayyaz Ahmed Gul, etc., which could only be assailed through alternate remedy in terms of Section 12(2) CPC, whereby learned counsel for the petitioner conceded to legal aspect but still insisted that instant matter may be probed and compromise deed

executed by the petitioner be declared in contravention of Section 35 & 36 of the Prisoner Act, 1900. The relevant provisions of Section 35 & 36 are reproduced as under:-

***35. Power for Civil Courts to require appearance of prisoner to give evidence. –***

*Subject to the provisions of section 39, any Civil Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer incharge of the prison.*

***36. District Judge in certain cases to countersign orders made under section 35. – (1)***

*Where an order under section 35 is made in any civil matter pending –*

*(a) in a Court subordinate to the District Judge,  
or*

*(b) in a Court of Small Causes [89][\* \* \*],*

*it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by, –*

*(i) the District Judge to which the Court is subordinate, or*

*(ii) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate.*

*(2) Every order submitted to the District Judge under sub-section (1) shall be accompanied by a statement, under the hand of the Judge of the subordinate Court or Court of Small Causes, as the case may be, of the facts which in his opinion render the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.*

7. The above referred provisions clearly spells out the procedure for recording of evidence of any person, who is confined in prison within the local limits of its

appellate jurisdiction which has certain pre-requisites, however, said provision could only be used for recording of evidence in Civil Courts whereas in present situation petitioner was not called by the Court for recording of any evidence rather petitioner himself opted to put appearance before the Court of Judicial Magistrate Section 30 (West), Islamabad for recording of his compromise and the application was filed by petitioner's counsel Mr. Khalid Ali Khokhar, Advocate, therefore, all the grounds raised by the petitioner are just an afterthought and could not be settled in the constitutional jurisdiction as all these questions are based upon disputed facts.

8. Keeping in view the above background, instant petition is misconceived and the same is hereby *dismissed in limine*. However, petitioner may avail legal remedy available to him under the law, if so desires.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid