

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No. 249 of 2015

Federation of Pakistan.

Vs

Asad Javed, etc.

APPELLANT BY: Raja Muhammad Khalid, D.A.G.

RESPONDENTS BY: Mr. Sher Afzal Khan, Advocate.

DATE OF HEARING: 17-12-2015.

ATHAR MINALLAH, J.- We shall decide the instant Intra Court Appeal, which is directed against judgment dated 24-04-2015, whereby the learned Single Judge in Chambers has partially allowed W.P.No.4394 of 2014 to the extent of declaring that the petitioner is entitled to remissions allowed for the entire period of his sentence. However, the calculation of the remissions was left to be decided by the concerned executive authorities. The learned Single Judge in Chambers also declared that for the purposes of Section 9 (4) of the Transfer of Offenders Ordinance, 2002 (hereinafter referred to as the "**Ordinance**") the sentence awarded to the respondent No.1 was compatible with the laws of Pakistan. The operative part of the impugned judgment is as follows:-

"In view of the above, petition is disposed of while holding that petitioner is entitled for available remissions allowed in Pakistan for whole sentence period i.e. the period served in foreign country as well in Pakistan and it is directed that the

respondents shall immediately reissue the Roll of Sentence after going through the record of case."

2. The brief facts, relevant for deciding the instant appeal, are that the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the "Government of UK") and the Government of the Islamic Republic of Pakistan (hereinafter referred to as the "Government of Pakistan") executed an agreement, which came into force on 19-08-2007 (hereinafter referred to as the "**Agreement**"). The Agreement is titled as "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Islamic Republic of Pakistan on the Transfer of Prisoners". The Ordinance was promulgated and notified in the *Official Gazette* on 03-08-2002. Pursuant to the provisions of the Ordinance, read with the Agreement, Asad Javed (hereinafter referred to as the "**Respondent No.1**") consented to his transfer vide the instrument dated 09-02-2010 executed by him before his transfer to Pakistan. The Respondent No. 1 was convicted and sentenced to twenty five years on charges of drug trafficking by a competent Court in the United Kingdom and the said sentence had attained finality as all remedies had been exhausted. He had, inter-alia, expressly consented to and acknowledged that the sentence imposed in the United Kingdom will continue to be enforced in Pakistan. He was, therefore, transferred to Pakistan on 21-08-2010, after serving his sentence in the United Kingdom for 6 years and 28 days. He was incarcerated on his transfer at the Central Prison Karachi so as to serve his remaining sentence of 18 years 11 months and 2 days. On the basis of letter dated 16-09-2010, issued by a Section Officer of the Ministry of Interior, the Respondent No.1 was released on 08-11-2010. On 27-08-2012, the Respondent No.1 was admitted to the District Prison, Lahore, pursuant to a criminal case registered as FIR No.307

of 2012 at the Police Station Mustafa Town Lahore. The Ministry of Interior, vide letter dated 28-08-2012, sought permission to take fingerprints of the Respondent No.1, as had been requested by the Government of UK. On 28-08-2012, the representative of the Government of UK, along with an officer of the rank of Section Officer (Law) from the Ministry of Interior, visited the prison and got the fingerprints of the Respondent No.1. On the same date i.e. 28-08-2012 the Respondent No.1 was released pursuant to a bail order granted by the Judicial Magistrate 1st Class, Lahore. The Lord Chancellor and Secretary of State for Justice of the Government of UK, vide letter dated 12-02-2014, sent to the Federal Minister for Interior, Government of Pakistan, expressed concerns regarding the early release of the Respondent No.1 in contravention of the terms of transfer agreed between the two countries. Consequent upon receiving the said letter, the Respondent No.1 was arrested in 2014. Moreover, a criminal case i.e. FIR No.24/2014 was also registered by the Federal Investigation Agency against the Section Officer of the Ministry of Interior, who is alleged to have written a letter dated 12-07-2010, without the approval of the competent authority, in order to facilitate the release of the Respondent No.1 on 21-08-2010.

3. After his arrest, the Respondent No.1 invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "*Constitution*") by filing W.P.No.4394/2014 seeking two distinct prayers. Firstly, a declaration that he had undergone sufficient sentence in terms of Section 9 (4) of the Ordinance and, therefore, sought release from prison and, secondly, a declaration that he is entitled to the remission in sentence w.e.f. the date of his arrest and a further direction was sought by him for the Respondent No.4 i.e. the Superintendent Central Jail, Adiala, Rawalpindi for his release after necessary calculation of

the remissions w.e.f. November 10, 2003. The learned Single Judge in Chambers disposed of the petition in terms as noted above.

4. Raja Muhammad Khalid, the learned Deputy Attorney General has contended that; the learned Single Judge in Chambers had not taken into consideration that the petition of the Respondent No.1 was not maintainable under Article 199 of the Constitution and, therefore, the same ought to have been dismissed in limine; the High Court, while exercising powers under Article 199 of the Constitution, was not the "Competent Court" referred to in section 9(4) of the Ordinance; the learned Single Judge in Chambers had not appreciated the Ordinance and the Agreement in its correct perspective; the remissions cannot be claimed as of right by prisoners transferred under the Ordinance; the Respondent No.1, in collusion with a Section Officer of the Ministry of Interior, had illegally and surreptitiously maneuvered his release from the prison in violation of the Ordinance, read with the Agreement; the Respondent No.1 is not entitled to remissions; the learned Single Judge in Chambers could not have declared the Respondent No.1 as being entitled to any remissions; the Respondent No.1 had approached this Court with unclean hands and was, therefore, not a bonafide petitioner for the purposes of seeking the extra ordinary discretionary relief under Article 199 of the Constitution; the manner in which the Respondent No.1 was released from prison in 2010 does not entitle him to any remission; the conduct of the Respondent No.1 is further obvious from the fact that he got himself admitted in the Prison in Lahore for one day so that his fingerprints could be taken by the visiting official of the Government of the United Kingdom; the Respondent No.1 illegally remained outside the prison from 2010 till his arrest in 2014 and the same period cannot be counted towards his continuous sentence awarded by the competent Court in the United Kingdom; the Intra Court Appeal is

maintainable as the proceedings are pursuant to his transfer under the Ordinance; the proceedings, whereby he was tried and convicted, had attained finality in the United Kingdom and, therefore, the same are not relevant for the purposes of the 3rd Proviso to Section 3 (2) of the Law Reforms Ordinance, 1972; the conduct of the Respondent No. 1 in collusion with an officer of the rank of a Section Officer has prejudiced the cases of transfer of several other Pakistani citizens.

5. Mr. Sher Afzal Khan, ASC, on the other hand has argued that; the Respondent No.1 is entitled to the benefits under the Crimes (Sentences) Act 1997, as promulgated in the United Kingdom; he has relied on the Criminal Justice Act 2003 and the Sentencing and Punishment of Offenders Act 2012, read with the Prison Service Order, in support of his contention that the Respondent No.1 was entitled to be released and granted remissions; the Respondent No.1 would have been released by November 2010 had he been incarcerated in the United Kingdom; the punishment and sentence awarded to a convict must be in consonance with the laws of the land i.e. the laws as enforced in Pakistan; he has relied on “Mrs. Fozia Sultana vs. Province of Sindh through Secretary, Home Department and 2 others”, **PLD 2013 Sindh 203**, “Imran Ali vs. Province of Sindh through Secretary, Home Department, Sindh Secretariat, Karachi and 3 others”, **2007 P Cr. LJ 1364**, “Muhammad Iqbal vs. Province of Sindh through Secretary, Home Department and 2 others”, **PLD 2011 Karachi 32**, “Akif Shoaib vs. Province of Sindh through Secretary, Home Department, Karachi and 2 others”, **PLD 2011 Karachi 633**, “Muhammad Ilyas and another vs. Muhammad Sufian and another”, **PLD 2001 SC 465**, “Ghulam Murtaza and another vs. The State”, **PLD 2009 Lahore 362**, “Zafar and another vs. The State”, **1999 SCMR 2028**; Reliance has been placed on United Nations Office on Drugs and Crime Handbook on

the International Transfer of Sentenced Persons; the judgment of the august Supreme Court passed in Jail Petition No.56 of 2005 in support of his contention that remission is a vested right of the respondent No.1; reliance has also been placed on the Research Paper by Anna Marrie Slaughter on the remissions and sentencing policies, as well as the research paper by Sheriff Bassio; further reliance has been placed on the judgment of "Thomas D. Powell, vs. United States Bureau of Prisons" 927 F 2d 1239.

6. We have heard the learned Deputy Attorney General and the learned counsel for the Respondent No.1, and have perused the record with their able assistance.

7. The questions which arise for our consideration, as raised by the learned Deputy Attorney General and the learned counsel for the Respondent No.1 are, firstly, the interpretation of the provisions of the Ordinance, read with the Agreement, in the context of section 9(4) and section 12 *ibid*; secondly, the interpretation of the phrase 'court of competent jurisdiction in Pakistan' referred to in Section 9 (4) of the Ordinance; thirdly, whether in the facts and circumstances of the instant appeal the respondent no. 1 had the locus standi to invoke the jurisdiction of this Court under Article 199 of the Constitution without having approached the Competent Authority notified under the Ordinance and, lastly, whether the petition filed by the Respondent No. 1, invoking the jurisdiction of this Court under Article 199 of the Constitution, was maintainable. In order to answer these questions it would be advantageous to first examine the Ordinance and the Agreement.

8. The object and purpose of promulgating and enacting the Ordinance is described in its preamble, as providing for the transfer of a citizen of Pakistan convicted of an offence in a foreign country to Pakistan

and a citizen of a foreign country convicted of an offence in Pakistan to that country and for matters connected therewith or ancillary thereto. Clause (a) of Section 2 defines an "agreement" as meaning an agreement entered into between Pakistan and any other country relating to the mutual transfer of offenders between the two countries. "Appropriate Authority" and "Competent Authority" have been defined in clauses (b) and (c) respectively. "Specified Country" is defined in clause (h) of Section 2 as meaning a country which entered into an agreement for mutual transfer of offenders with Pakistan, and is notified as such by the Federal Government by notification in the official Gazette. Section 3 provides that where an agreement for mutual transfer of offenders has been entered into between Pakistan and any Specified Country, whether before or after the commencement of the Ordinance, the Competent Authority shall, by notification in the official Gazette, declare that the provisions of the Ordinance shall apply in respect of such country. Admittedly, the Agreement falls within the definition of an 'agreement' as defined in clause (a) of Section 2, while the United Kingdom has been notified as a Specified Country under section 3. Section 4 and 5 of the Ordinance prescribes the procedure for making an application and requesting for the transfer of an offender by the Competent Authority or an Appropriate Authority as the case may be. Section 6 provides for the conditions of transfer and, inter-alia, in clause (e) it makes the consent of both the Competent Authority and the Appropriate Authority of the Specified Country to the transfer of an offender as a pre condition. Clause (d) of Section 6 expressly requires that the offender consents to his transfer. Section 7 prescribes the procedure for the issuing of a warrant authorizing the transfer. Section 9, inter alia, contemplates and provides for the legal nature and duration of the sentence imposed on the offender in the Specified Country. The essential ingredients of Section 9 may be summarized as follows:-

- i. *The competent authority nominates the Inspector General of Prison who is to take the custody of an offender transferred to Pakistan pursuant to an order under Section 4.*
- ii. *The nominated Inspector General of Prison is empowered to keep the offender in custody in any place as may appear to him to be appropriate for giving effect to the sentence of imprisonment imposed on such offender in such specified country for the period of the sentence as if it were a sentence imposed by Court in Pakistan.*
- iii. *The enforcement of the sentence of imprisonment imposed on any offender who is transferred to Pakistan is to be governed by the laws of Pakistan.*
- iv. *Subsection 3 provides that notwithstanding anything contained in sub-section (2) of Section 9 the competent authority is bound by the legal nature and duration of the sentence of imprisonment imposed on any offender transferred to Pakistan unless otherwise specified in the Agreement.*
- v. *Subsection 4 of Section 9 further provides that where the legal nature and duration of the sentence of imprisonment imposed on any offender transferred under sub-section (1), is incompatible with any laws of Pakistan, then it shall be lawful for*

a Court of competent jurisdiction in Pakistan to adopt such sentence so as to make it compatible with the laws of Pakistan provided that the sentence as adopted by such Court in Pakistan corresponds, as far as practicable, to the sentence imposed on such offender in the specified country from which such offender was transferred to Pakistan.

9. The next relevant provision for the purposes of deciding the instant appeal is Section 12 of the Ordinance, which relates to remission and the President's power to grant pardon. Sub section (1) deals with the remission of a sentence enforced in the Specified Country, and provides that the transfer of an offender is subject to any remission of the sentence of imprisonment imposed on such offender in the said Specified Country where he was convicted, and to which he may have become entitled to on the date of the transfer in accordance with the laws relating to remission of a sentence in force in that country. Subsection 2 declares that nothing in the Ordinance shall be so construed as to limit or take away the power of the President to grant pardon or remission of sentence to any offender under Article 45 of the Constitution or by any other authority under any law of Pakistan for the time being in force. It is, therefore, obvious that section 12 makes a distinction between remissions to which an offender may have been entitled at the time of transfer, and the power of a competent Authority or the President to grant the remission while serving the sentence in Pakistan. A plain reading of the two sub sections shows that in both the eventualities the benefit of remissions is acknowledged, and an offender would be eligible for such remissions as may be granted by the respective competent authorities. As a corollary, the entitlement of remissions in the Specified Country essentially has to be

determined and granted by the competent authority in that country, while for the period after the transfer, by the relevant competent authority in Pakistan. The nature of remission and how this power may be exercised or claimed in the context of the instant appeal shall be discussed later.

10. Before proceeding further it would be pertinent to refer to the relevant clauses of the Agreement. Clause (d) of Article 1 defines 'sentence' as meaning any punishment or measure involving deprivation of liberty ordered by a Court for a limited or unlimited period of time, in the course of the exercise of its criminal jurisdiction. Article 5 and Article 9 prescribes the procedure for transfer of the offender to and enforcement of the sentence in the Receiving State, in the context of the instant petition, Pakistan. Article 9 of the Agreement is relevant for the purposes of the obligation relating to the legal nature and duration of the sentence and is, therefore, reproduced as follows:-

- 1. The continued enforcement of the sentence after transfer shall be governed by the law of the Receiving State and that State shall be competent to take all appropriate decisions.*
- 2. The Receiving State shall be bound by the legal nature and duration of the sentence as determined by the Transferring State. If, however, the sentence is by its nature or duration incompatible with the law of the Receiving State, that State may, by a court or administrative order and with the agreement of the Transferring State prior to transfer, adapt the sanction to the punishment or measure prescribed by its own law*

for a similar offence. It shall not, however, aggravate, by its nature or duration, the sanction imposed in the Transferring State, nor exceed the maximum penalty prescribed by the law of the Receiving State.

11. Article 17 of the Agreement provides for the settlement of disputes through negotiations between the two sovereign States.

12. It is obvious from the above noted provisions of the Ordinance that it exclusively deals with matters relating to the transfer of offenders pursuant to an Agreement signed between the Government of Pakistan and any Specified Country, which in the instant case is the United Kingdom. In so far as the legal nature and duration of the sentence and its compatibility with the laws of Pakistan is concerned, the same has been dealt with in the last two sub sections of section 9 of the Ordinance, while the relevant clause of the Agreement is Article 9 thereof. Although sub Section 2 provides that enforcement of the sentence of imprisonment shall be governed by the laws of Pakistan, this provision is subject to sub section 3, as the latter would prevail due to the non obstante clause expressly used with reference thereto. Sub section 3 makes it a statutory obligation of the Competent Authority in Pakistan to be bound by the legal nature and duration of the sentence of imprisonment imposed on the offender transferred to Pakistan under section 9(1), notwithstanding that the enforcement of the sentence is to be governed under the laws of Pakistan. This, however, is qualified and circumscribed by the phrase 'unless otherwise provided in the Agreement'. Observing the legal nature and duration of the sentence of imprisonment imposed in the United Kingdom is, therefore, a mandatory obligation unless otherwise provided in the Agreement. Thus the clauses of the Agreement relating to the duration and legal nature of the sentence become relevant and have to be read with or as

part of section 9 of the Ordinance. Sub section 4 contemplates a situation where the legal nature and duration of sentence imposed in the Specified State is incompatible with the laws of Pakistan. In such an eventuality it has been declared that it would be lawful for 'a court of competent jurisdiction in Pakistan' to adopt such sentence so as to make it compatible with the laws of Pakistan, provided that such sentence corresponds, as far as practicable, to the sentence imposed in the Specified Country. When the four subsections of Section 9 are read conjunctively, it manifests that the Government of Pakistan is bound by the legal nature and duration of the sentence imposed in the Specified Country, in this case the sentence imposed on the respondent no. 1 in the United Kingdom. However, the exceptions are; the eventuality of making the legal nature or duration of sentence compatible with the laws of Pakistan under section 9(4); the remissions granted under section 12; or anything otherwise specified in the Agreement. The Ordinance neither defines the court of competent jurisdiction in Pakistan, nor prescribes the procedure in this regard. We have been informed that no rules have been framed under section 14 of the Ordinance. However, in order to answer these questions the Agreement has to be examined as to whether its clauses specify anything in this regard.

13. As already noted above, the obligation of being bound by the legal nature and duration of sentence imposed in the Specified Country i.e. the United Kingdom, has been made subject to the relevant clauses of the Agreement by using the phrase 'unless otherwise provided in the Agreement'. Sub section 4 of section 9 essentially relates to the legal nature and duration of the sentence of imprisonment and, therefore, the said provision has to be read with sub section 3 and the provisions of the Agreement. The relevant provision of the Agreement relating to the legal nature of the sentence and the

duration of the sentence imposed in the Specified Country is clause 2 of Article 9 of the Agreement, as has been reproduced above. It provides that the Receiving State can adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. This adaption is, however, subject to the conditions and procedure prescribed in the clause itself i.e (i) only the State is competent (Pakistan in this case) (ii) by a court or administrative order (iii) with the Agreement of the Transferring State i.e the United Kingdom and (iv) prior to transfer of the offender. The adaptation, however, can neither aggravate, by its nature and duration, the sentence imposed, nor exceed the maximum penalty prescribed by the law of the Receiving State. The said conditions are, therefore, to be read as an integral part of subsection 3 and 4 of section 9 of the Ordinance, as the same falls within the phrase 'unless otherwise provided in the agreement'. We are also mindful of the fact that the Agreement is in the nature of an instrument within the realm of foreign relations of the State of Pakistan, and the Ordinance has been promulgated to give effect to such sovereign commitments. It would, therefore, be apt to adopt a purposive and contextual interpretation so as to advance the object and purpose of enacting the Ordinance, and maintaining the sanctity of the sovereign commitments made through the Agreement.

14. We, therefore, in the context of section 9(4) of the Ordinance and the Agreement hold that if there is a question of incompatibility of the sentence imposed in the United Kingdom, then the adoption of the sanction has to be made through the procedure as agreed under Article 9(2) of the Agreement. In case the Receiving State is Pakistan, then the latter alone and not the offender is competent and empowered to refer the matter to a Court for adoption of the sanction, provided that the Government of UK has agreed and such adaptation of the sanction is ordered by the concerned competent Court

prior to the transfer of the offender. However, if such a situation arises after the transfer of the offender it would still not preclude the two sovereign States from mutually resolving the same, or to settle through negotiations as specified in Article 17 of the Agreement. The 'court of competent jurisdiction in Pakistan' appearing in section 9(4) is, therefore, the court to which the matter may be referred by the Competent Authority, or by any other person authorized in this regard by the Federal Government, acting on behalf of the State of Pakistan. As an illustration in the context of the facts and circumstances of the instant appeal, the Respondent No.1 has been convicted for offences relating to drug trafficking/narcotics, therefore, had there been a question of incompatibility with the laws of Pakistan, the Government of Pakistan, after prior agreement with the Government of UK, could have referred the matter to a court of competent jurisdiction in this regard and, therefore, may have referred the matter to the Special Court established under Section 46 of the Control of Narcotic Substances Act 1997, or to any other Court notified as a competent Court for the purposes of Section 9 (4) of the Ordinance. Obviously the offender cannot invoke sub section 4 of section 9 of the Ordinance independently, as that would violate the legislative intent as well as the Agreement executed between two sovereign countries. The question of incompatibility has to be determined prior to the transfer and with the agreement of the Specified or Transferring Country. In case the offender has any grievance regarding the incompatibility of the sentence imposed in the Specified Country with the laws of Pakistan after his transfer, then it would be open for him or her to approach the Competent Authority, which the legislature has appointed as the authority in the Receiving State to deal with the matters relating to and in connection with the Ordinance. We, therefore, hold that in the instant case the Respondent No.1 had no locus standi for the purposes of invoking Section 9 (4) of the Ordinance through a constitutional

petition, nor could he have been treated as an 'aggrieved person' without having approached the competent authority, or having adopted the mandatory procedure as prescribed and laid down in the Ordinance read with the Agreement. By consenting to his transfer, the respondent No.1 had unequivocally committed himself to accept and abide with the terms and conditions of the Agreement. Clause 1 of Article 5 of the Agreement provides that any prisoner to whom the Agreement applies has to be informed by the Transferring State of the substance of the Agreement.

15. Next is the question of remissions. Section 12 of the Ordinance provides for the entitlement of a transferred offender in so far as the remissions are concerned. Sub section 1 *ibid* provides for extending the benefit of remissions, as enforced in the Specified Country, and to which an offender had become entitled on the date of transfer to the Receiving State. Clause 2 of Article 5 of the Agreement prescribes the information which a Transferring State i.e. the Specified State is required to provide to the Receiving State and such information, *inter alia*, includes in sub clause (d) information regarding remission. Thus the record relating to the offender on the date of his transfer is made available to the Competent Authority and includes, *inter alia*, the entitlement under section 12(1) of the Ordinance. In any case such information can be obtained by the Competent Authority even after the transfer of the offender under the Ordinance if need be. Likewise, subsection 2 provides that nothing in the Ordinance is to be construed so as to limit or take away the power of the President relating to the grant of pardon or remission of sentence under Article 45 of the Constitution, or by any other authority under any law of Pakistan. Therefore, an offender transferred under the Ordinance is eligible to claim any remission applicable in his case, either granted by the President in exercise of powers under Article 45 of the

Constitution or by any other authority under any law of Pakistan. The expression 'any other authority under any law in Pakistan' is obviously in reference to an authority vested with such power and jurisdiction i.e. to determine as to whether the offender is entitled to remission or not. In order to illustrate, we may refer to Chapter 8 of the *Pakistan Prisons Rules, 1978*, (hereinafter referred to as the "Rules") which deals with remissions. Rule 199 defines a remission system as an arrangement by which a prisoner sentenced to imprisonment, whether by one sentence or by consecutive sentences, for a period of four months or more may by 'good conduct and industry' become eligible for release when a portion of sentence ordinarily not exceeding one-third of the whole sentence has yet to run. Rule 200 further provides that the remission under the Rules is of two kinds i.e. 'ordinary' or 'special'. The ordinary remissions have been described in Rule 201 to 205. Rule 206 to 209 prescribes the procedure for awarding and calculating the remission. Rule 211 to 213 further enumerates various other ordinary remissions. Special remissions and the grounds for seeking the same have been enumerated in Rule 214. Rule 215 provides for remissions on the basis of education and enhanced education. The Rules have prescribed limitations and restriction in case of granting remissions. Remissions, therefore, involve the exercise of discretion by the competent authority e.g. the latter has to form an opinion as to whether or not on account of 'good behavior' a prisoner/offender is entitled to be granted remission, or to any other kind of remission under the law. The competent authority, while applying his/her mind, has to take into consideration relevant matters, particularly the criteria and guidelines provided under the Rules. It is, therefore, obvious that an offender who claims remission has to approach the relevant competent authority in this regard. It is within the exclusive jurisdiction of the latter to determine whether a person claiming remission is entitled to being granted the same. The offender,

therefore, may claim remission under both the sub sections of section 12 but for doing so has to approach the relevant competent authority in this regard.

16. In the instant case the respondent no. 1, after his arrest in 2014, invoked the jurisdiction of this Court under Article 199 through W.P.No.4394 of 2014. The prayer sought was in the nature of seeking a writ of mandamus. Admittedly, neither the Respondent No.1 had approached the Competent Authority notified under the Ordinance, nor any other authority empowered under any law for granting remission. It is settled law that in order to seek a writ of mandamus certain pre-requisites are to be complied with before invoking the jurisdiction of a High Court under Article 199 of the Constitution. Reference in this regard may be made to the principles and law laid down by the august Supreme Court in “District Magistrate, Lahore and another vs. Syed Raza Kazim” **PLD 1961 Supreme Court 178**, wherein it has been held as follows:-

“Now, having regard to the limited scope of the powers vested in the High Courts and this Court by the Laws (continuance in Force) Order to issue writs only of habeas corpus mandamus, prohibition, quo warranto and certiorari, we have to point out that the foundation for an application for a writ of mandamus (which alone is applicable in the present case as the function of the licensing authority is purely administrative) is that there must exist a legal right in the person seeking the writ to insist upon a clear duty being performed by some public officer or authority in respect of that right.

There are other good reasons, too, upon which this application for a writ of mandamus must fail. The accepted conditions for the grant of a writ of this nature are that it must be preceded by a demand of justice and the refusal thereof and that there should be no other equally expeditious, in expensive and efficacious remedy available to the person seeking this extraordinary remedy."

17. In the light of the above, it is essential for a person who invokes the jurisdiction under Article 199 of the Constitution seeking a writ in the nature of mandamus to explicitly show that there exists a legal right in such a person to insist upon a clear duty being performed by some public officer in respect of that right. Moreover, that a demand for performance of such duty ought to have been made and the same had been met with refusal by the public officer or authority in relation to the right being asserted. A person seeking a writ of mandamus is further required to satisfy the Court that no other equally expeditious, in expensive and efficacious remedy is available to him or her. In the context of the instant appeal it was essential that in case of any grievance under the Ordinance, whether relating to incompatibility of the sentence imposed on the respondent no.1 by the Court of the United Kingdom with the laws of Pakistan or any other matter in connection with the legal nature and duration of the sentence, the respondent no. 1 was required to have approached the Competent Authority notified under the Ordinance.

18. As already noted above, the Agreement was executed after the promulgation of the Ordinance and is in the nature of falling within the realm of foreign relations of Pakistan. Any doubt or interpretation of any clause of

the Agreement is also to be resolved by the two sovereign countries through negotiations as specified in Article 17 thereof. The transfer of the offender is not a vested right but is solely based on the consent of the two sovereign States as well as the offender. The legislature has nominated the Competent Authority to deal with matters relating to the transfer of the offender under the Ordinance. The notified Competent Authority is, therefore, the proper forum for deciding any grievance of the offender, or for processing the claim of a benefit under the Ordinance. All matters, including the processing of claims of remissions, whether relating to entitlement under sub section 1 or 2 of section 12 have to be made through the Competent Authority. The Ordinance and the Agreement unambiguously show that the transfer of an offender is solely based on the mutual consent of the two sovereign States and, therefore, any matter relating to the Ordinance or the Agreement necessarily has to be resolved, settled or processed through the Competent Authority notified in Pakistan. The latter not only has access to the relevant information, but if required can also obtain the same from the Appropriate Authority in the Specified Country. Admittedly, neither the Respondent No.1 had approached the Competent Authority defined in Clause (c) of section 2 of the Ordinance, nor the latter or any authority competent in respect of granting or determining the entitlement for remission have refused to perform a clear duty imposed under the law.

19. The case law relied upon by the learned counsel for the Respondent No.1 has been considered but in the light of the above discussion, either we have found the same to be distinguishable or with utmost reverence and respect, have not been able to persuade ourselves to concur that matters relating to the Ordinance can be dealt with otherwise than as discussed above. It is settled law that when the law prescribes for a thing to be done in a

particular manner, then it has to be done in that manner alone. Reliance is placed on "Muhammad Anwar and others vs. Mst. Ilyas Begum and others" **PLD 2013 SC 255.**

20. In view of the above, we hold that the petition filed by the Respondent No.1 was not maintainable under Article 199 of the Constitution. We, therefore, allow the instant appeal and set-aside the impugned order. In order to claim any entitlement under Section 12 or any grievance relating to section 9 (4) of the Ordinance, the Respondent No.1 shall be at liberty to approach the Competent Authority as defined in clause (c) of section 2 of the Ordinance. We expect that if the respondent No.1 makes a representation to the Competent Authority the latter shall consider the same, and thereafter proceed in accordance with the law.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on 01-02-2016.

JUDGE

JUDGE

Asif Mughal/*

Approved for reporting.