

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

1. Cr. Appeal No. 01/2016

In

Cr. PLA No. 04/2016.

1. Mir Shakeel-ur-Rehman **Petitioner.**
Versus
2. The State of Gilgit-Baltistan **Respondent.**

2. Cr. Appeal No. 15/2016

In

Cr. PLA No. 18/2016.

1. Mst. Shaista Lodhi D/o Ali Gohar & 02 others. **Petitioners.**
Versus
2. The State of Gilgit-Baltistan **Respondent.**

PRESENT:-

1. Mr. Muhammad Issa senior Advocate for the petitioner in Criminal Appeal NO.01/2016 in Cr. PLA No.04/2016.
2. Mr. Johar Ali Khan advocate on behalf of the petitioners in Criminal Appeal No. 15/2016 in Cr.PLA No. 16/2016.
3. The Advocate General Gilgit-Baltistan on behalf of the State of Gilgit-Baltistan in both the appeals.
4. Mr. Munir Ahmed Advocate alongwith Mr. Asadullah Khan Advocate and Mr. Amjad Hussain Advocate on behalf of the complainant in both the appeals.

DATE OF HEARING: - 20.09.2016.

DATE OF ANNOUNCEMENT OF JUDGMENT:- 30.09.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... Both the appeals have arisen out of the Common Impugned Judgment dated 23.11.2015 in Criminal Appeal Nos. 45/2014 and 48/2014 passed by the learned Gilgit-Baltistan Chief Court, whereby both the appeals filed by the petitioners were dismissed. The petitioners being aggrieved by and dissatisfied with filed this petition for leave

to appeal. The leave in above appeals was granted on 31.03.2016 and it were heard on 20.09.2016. Both appeals are to be disposed off by a common judgment.

2. Briefly the facts of the case are that on 14.05.2014 a Qawali was sung in a morning show during the transmission of a program i.e. Utho, Jago Pakistan in GEO Channel. The Qawali in question which telecast by the Geo Channel is relating to Hazrat Ali (RA) and Hazrat Bibi Fatima (RA) which is mostly sung and on aired on various other channels on the occasion of marriage ceremonies. Whereafter, various competitor channels and members of civil society of Pakistan started provocative campaign against the host and the channel of the said program particularly against the petitioner charging different allegations i.e. commission of impertinence and disrespect to the sacred family of the Ahl-e-Baiat. Consequently, a number of 99 FIRs across the country including 09 FIRs in Gilgit-Baltistan have been registered against the petitioners. The FIR No. 23/2014 and 43/2014 under Section 295-A/34 and under Section 298-A/34 PPC read with 6/7 Anti-Terrorism Act 1997 at Police Station Baseen District Gilgit and at police station Chilas District Diamer were instituted against the petitioners and trial was also conducted in the learned Anti Terrorism Court Gilgit in Absentia of the petitioner. The learned Trial Court upon hearing convicted the proclaimed offenders including the petitioners to undergo for ten (10) years Rigorous imprisonment and to pay fine of Rs. 300,000/- (rupees three hundred thousand only) each under

Section 21-L of the Anti-Terrorism Act 1997. In addition to the aforesaid imprisonment various other sentences and fines were also awarded to the petitioners under various Sections of Anti-Terrorism Act 1997. The petitioners feeling aggrieved by the said judgment of the learned Trial Court filed Criminal Appeal No. 45/2014 and 48/2014 before the learned Gilgit-Baltistan Chief Court which upon hearing were dismissed on technical ground vide impugned judgment dated 23.11.2015, hence, this petition for leave to appeal. This court vide order dated 31.03.2016 granted leave to appeal while suspending the operation of the impugned judgment in question. Consequently, notices were issued to the respondents for their appearance and the case was heard on 20.09.2016 and the judgment was reserved.

3. Mr. Muhammad Issa learned senior counsel for the petitioner in Criminal Appeal No. 01/2016 alongwith Mr. Johar Ali Khan Advocate on behalf of the petitioners in Criminal Appeal No. 15/2015 submits that the Qawali relating to Hazrat Ali (RA) and Hazrat Fatima (RA) was telecast in the morning show of Geo Channel, is sung almost on the occasion of the wedding ceremonies of the Shia Community throughout the country generally and in Gilgit-Baltistan particularly. He also stated that in the marriage of his own sons and daughters the said Qawali was sung as "Munqabat". They contended that the petitioner Mir Shakeel-ur-Rehman in Criminal Appeal No. 01/2016 has nothing to do with the management of the morning show in question as the same is

organized and managed by the Independent Media Corporation (IMC) which is a private corporation. They also submit that the petitioner was/is out of country for last approximately 08 years and he has no role in telecasting of the said program at all. Furthermore, the petitioner is neither a share holder nor he has the role of any executive/Director under the Geo Channel. The learned counsel placed on record a copy of extract Third Schedule (under Section 156) of The Company Ordinance 1984, Form-A Annual return of companies share capital, vide Registration No.0042970 dated 31.10.2013 with the list/names of directors and members of M/s Independent Media Corporation (Private) Limited , Printing House I.I Chundrigar Road, Karachi as under:-

DIRECTORS:-

- (a). Muhammad Ibrahim.
- (b). Mrs Erum Rehman.

MEMBERS .

- (C) . Mir Ibrahim Rehman.
- (d) Mrs. Erum Rehman.
- (e) Mrs. Rashide Faheem
- (f) J&S Enterprises Private Limited
- (g) Jang (Pvt) Limited.
- (h) Pakistan Ink and Packing Industries (Pvt) Limited.

4. They reiterated their submissions that the said program is owned and controlled by a private limited corporation hosted by the co-accused namely Dr. Shaista Lodhi who had unconditionally

prayed for forgiveness first & foremost from the Allah Almighty and generally she also apologized for her unintentional and inadvertent mistake through publishing statement at print media as well as through Electronic media from all those members of civil society of Pakistan who have been hurt by the telecast of the said morning show. Whereas the petitioner No. 02 & 03 in Criminal No. 15/2016 participated in the said morning show as guests. They further submit that it is not a crime to telecast the said Qawali and the purpose of the telecast of the said quail was meant to pay homage & tribute for the sacred family of Ahlay-Bait and to increase their dignity and respect in the eyes of viewers. It was never meant to decrease (Nauz Billah) the respect of the Holy Family at all. They also submit that the management of Geo Channel has also suspended the host of the said morning show and the inquiry was also conducted in this regard. They argue that despite of all the aforementioned steps taken by the management of Geo Channel more than one hundred FIRs have been chalked out by the different groups and individuals with the allegation of commission of crime as no person can be held for double jeopardy as per law of the land. They urged that the registration of more than hundred FIRs by the various individuals and groups for ulterior motives or on the behest of other various competitor channels based on professional jealousy and rivalry on personal grudges. They reiterate that supposed if it was a crime to telecast the said Qawali then one FIR against the commission of said crime should have been registered within the

territorial jurisdiction at Karachi as the program was on aired at Karachi Sindh, there must be an FIR in the concerned Police Station under the relevant Sections of law. They maintained that by chalking out of more than one hundred FIRs across the country including 09 in Gilgit-Baltistan against one crime is unprecedented and not understandable as no accused can be vexed twice for the same offence. Resultantly, prosecution of the offences has been started simultaneously in the various Courts across the country. At this stage they referred Article 258 of the Constitution of the Islamic Republic of Pakistan 1973 which is not applicable in Gilgit-Baltistan. The territory of Gilgit-Baltistan is not the De-jure part of Pakistan and the petitioners being the citizen of Pakistan cannot be prosecuted under any adopted law(s) and the punishments & sentences awarded under such law by the courts of Gilgit-Baltistan is void ab-initio and having no legal effect.

5. They also add force to their submissions that when we examine the alleged offence from constitutional point of view, the matter involves trial of a person whose rights are protected under the Constitution of Pakistan, the trial of such person by a court within the jurisdiction of Gilgit-Baltistan where constitution of Pakistan has not been extended and the creation of the trial court has not been carried out under the Constitution of Pakistan, so it would be deprivation and violation of the guaranteed fundamentals rights of the petitioners. The learned counsels for the petitioners further submit while analyzing comparatively Article 260 of the

Constitution of Pakistan and the article 1 & 2 of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009. Firstly Article 1 of said Order, restricts scope of it exclusively to the territorial jurisdiction of Gilgit-Baltistan. Secondly, Article 2 of the said Order defines the “citizen” which stipulates that “unless otherwise expressed in this Order “citizen” means a person who has a domicile of Gilgit-Baltistan. The aforementioned Articles of the said Order transpire that the order in question is restricted to the Territorial Jurisdiction of Gilgit-Baltistan. It is applicable only upon the citizens of the said region as defined in the Order itself. Similarly, the Article 260 of the constitution of Pakistan 1973 provides definition of a citizen of Pakistan as defined by law.

6. They further submit that a citizen of Pakistan derives his rights and obligations from the constitution of Pakistan only and a citizen of Gilgit-Baltistan seeks his rights and obligations from the Presidential Order i.e. The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009. Moreover, the area of Gilgit-Baltistan is governed by virtue of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 and the judicial system in Gilgit-Baltistan has been functioning under article 60 and 76 of the said Order whereas, the subordinate judiciary in Gilgit-Baltistan is created under the statutory provisions under the supervision of Gilgit-Baltistan Chief Court . The Article 76(3) of the said order expressly provides that “No court shall have any jurisdiction which is not conferred on it by this order or by or under any other law”.

7. They specifically argue that it is constitutional not a statutory restriction to initiate the trial against a citizen of Pakistan whose fundamental rights have been guaranteed by constitution of Pakistan. They conclude their arguments relating to the legal points of view while saying that the learned Anti-Terrorism Court has exceeded from his domain and territorial jurisdiction while initiating the prosecution and passing a Judgment thereto which according to them having no legal force and the same is ultra vires and of no legal effect. They further submit that keeping in view the aforesaid arguments, there is no justification for trial of a person in a Court of Gilgit-Baltistan where offence has not been committed and only consequences have been ensued. Section 179 of Cr.PC provides clear guidelines to register an FIR and to initiate a trial within the territorial jurisdiction of the court where an alleged commission of offence is reported. According to the Section 179, FIR NO. 109/2014 was registered at Police Station Methadar, Karachi, is prosecutable at Karachi jurisdiction and the remaining multiple FIRs registered at various Police Stations of the Country including 09 in Gilgit-Baltistan are against the principle of Criminal Justice System of Pakistan, hence, the same are illegal and without jurisdiction which required to be quashed in line with the law . They particularly refer Article 95 of The Gilgit-Baltistan (Empowerment and Self Governance) Order 2009 which clearly stipulates that “in case of conflict between the laws of Pakistan and the law framed under the Order in question of Gilgit-Baltistan, the law of Pakistan

shall prevail". They urge that keeping in view of the above referred legal questions the Hon'ble Supreme Court of Pakistan declared the proceedings and taking cognizance of the matter in question by the Anti Terrorism Court Gilgit are illegal & unconstitutional. The effect of the said judgment has also been seized in the territories of Pakistan under Article 1(2) of Constitution of the Islamic Republic of Pakistan, 1973 vide order dated 10.12.2014 in Constitution Petition No. 91/2014. The operative part of the said order of the Hon'ble Supreme Court of Pakistan is reproduced as under:-

"After hearing the learned counsel for the petitioner we direct that in the meanwhile the judgment in question shall not been implemented in the territories of Pakistan as defined in Article 1(2) of the Constitution of Islamic Republic of Pakistan, 1973".

8. They also submit that basically the matter in question squarely falls under The PEMRA Ordinance 2002. The Council of Complaints on the multiple complaints from the public at large for airing objectionable content on Geo Channel, the Pakistan Electronic Media Regulatory Authority (PEMRA) referred the matter to the Council of Complaints Sindh who upon hearing punished the channel in question under relevant rules by awarding them the following punishments vide order dated 20.06.2014:-

“Quote”

1. The licence No. 10-2 (79) STV-2007 dated 22.05.2008 issued to M/s Independent Media Corporation (Pvt) Ltd, for Geo

Entertainment is suspended for a period of 30 days with effect from 20.06.2014 to 19.07.2014.

2. A fine of Rs. Ten (10) million is imposed on M/s Independent Media Corporation Pvt Limited (Geo Entertainment) to be deposited before the expiry of the suspension period failing which the channel shall not be allowed to resume its transmissions and its licence shall remain suspended till such time the fine is paid.
3. Re-broadcast of the programme “Utho Jago Pakistan” aired on 14.05.2014 on Geo Entertainment is completely banned. Any channel found relaying the said programme either in part or in toto shall henceforth be proceeded against.
4. The programme, “Utho Jago Pakistan” as well as its entire team including host Ms. Shaista Lodhi, the producer etc is also banned forthwith.

“Unquote”

9. They contended that as many as ninety nine (99) FIRs on the same matter have been registered against the petitioner in all the four provinces and 09 FIRs in Gilgit-Baltistan. The petitioners were firstly prosecuted and punished by suspending licence of Geo Channel and awarding sentences of fine by PEMRA vide order dated 20.06.2014. Secondly, the petitioner was tried/prosecuted in FIR NO. 02/2014 in the Court of Judicial Magistrate Chamman (Baluchistan), consequently, the petitioner was acquitted vide order dated 24.06.2014. Both the aforementioned Judgments i.e. conviction by the PEMRA authorities under Special law of PEMRA Ordinance 2002 for violation of PEMRA laws and rules thereto & acquittal of petitioner by the learned Judicial Magistrate at Chamman Baluchistan, are holding field as no appeal has been

filed thereto either by the complainant or by the State. Both the aforementioned judgments were delivered much prior to the Impugned Common Judgment dated 25.11.2014 in TC case No.32/2014 passed by the Anti-Terrorism Court-I Gilgit-Baltistan. The learned counsels for the petitioners further contended that the petitioners also filed Constitution Petition No. 891/2014 before the learned High Court of Baluchistan pleading therein that only one case registered under FIR No. 171/2014 is (under trial) be tried/prosecuted and the rests of the FIRs be quashed as all FIRs relate to one incident which has been allegedly occurred/aired in Karachi, Sindh. The learned High Court of Baluchistan upon hearing the same was partially allowed and quashed the proceedings in three FIRs except FIR No. 117/2014 registered under Section 295-A, 298-A & 109 PPC (pending trial in the Court of Sessions Judge at Quetta) vide its judgment dated 30.12.2014. The learned Session Court at Quetta upon hearing acquitted the appellant which also holds field. Likewise, a Constitution Petition was also filed before the learned High Court of Sindh at Karachi invoking Section 185 Cr. PC for the purpose of quashment of the FIRs registered in the said province which upon hearing was declined. They reiterate that the alleged offence was committed in Karachi District, Sindh and FIR No. 109/2014 and 189/2014 registered at Karachi and cognizance has already been taken by the Anti Terrorism Court No. III Karachi. Similarly, the PEMRA has also awarded punishments to the responsible persons who allegedly

committed the offence in question under relevant law and rules, hence, the cognizance of the same alleged crime by the Anti-Terrorism Court Gilgit-Baltistan was definitely a case of Double Jeopardy and the same was illegal and void ab-initio. Secondly, the initiation of trial and passing a judgment thereto against the petitioners in absentia by the learned Trial Court is ultra vires to the provisions of Articles 1 (2) (d), 10-A, 13, 14, 258 and 260 of the Constitution of The Islamic Republic of Pakistan, 1973 as the said fundamental rights provide protection to its citizens. The petitioners are the law abiding citizens of Pakistan who cannot be deprived from their constitutional rights. The learned Anti-Terrorism Court Gilgit-Baltistan and the learned Gilgit-Baltistan Chief Court have travelled beyond their jurisdiction while taking cognizance and passing judgment thereto which is definitely a clear violation of Articles 1, 2, 60, 76(3) and 95 of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 as well. The initiation of trial, recording conviction and awarding of punishments to the petitioners by the learned Trial Court Gilgit-Baltistan and consequent dismissal of the appeal of the petitioners by the learned Gilgit-Baltistan Chief Court was patently negation and violative of the provisions of Sections 177, 179, 185 (2) Cr. PC 1898 Sections 295-A, 298-A and 34 of the Pakistan Penal Code read with Section 7 of the Anti Terrorism Act, 1997, 265- K, 21-L of the Anti Terrorism Act, 1997.

10. They finally submit that the petitioners have no role in telecasting of alleged contemptuous material against the religious sentiments of the Muslims and the petitioners, cannot even imagine to do so. They concluded that the learned Trial Court has illegally, unlawfully and without jurisdiction has prosecuted the case against the petitioner in absentia. The learned Gilgit-Baltistan Chief Court should have to set aside the judgment of the learned Trial Court but instead of doing so the learned Gilgit-Baltistan Chief Court dismissed the appeals of the petitioners on technical grounds vide impugned judgment dated 13.04.2014 which is not tenable and liable to be set aside to meet the ends of justice. In support of the aforementioned contentions they relied upon the case laws in case titled Government of Punjab versus Ziaullah Khan reported as 1992 SCMR 602, in case titled Muhammad Fazil & others versus The State reported as 2006 SCMR 1432, in case titled Muhammad Arif versus The State reported as 2008 SCMR 829 and in case titled Mir Ikhlaq Ahmed versus The State reported as 2008 SCMR 951.

11. Conversely, the learned counsels appearing on behalf of the complainant contend that that the petitioners /convict accused remained fugitive from law and did not surrender either before the learned trial court or before the learned Gilgit-Baltistan Chief Court or before this apex court. They also contend that the learned trial court keeping in view the perpetual absconson of the petitioner after fulfilling the legal requirements as provided under sub Section 10 of section 19 of the Anti Terrorism Act, 1997 has rightly declared

them as “Proclaimed Offenders” and a counsel on the expenses of the State was also provided them to defend the allegations. They also contend that the initiation of the trial was in the knowledge of the petitioners but they intentionally avoided to surrender before the learned trial court. They further contend that no accused can claim relief while not surrendering him before the court of law and in case of perpetual absconsions, the properties of the accused were/is confiscated as per law. They argue that it is a settled principle of Criminal Justice System that the accused can be convicted and sentenced under section 21-L of The Anti Terrorism Act, 1997, hence, the learned Anti Terrorism court Gilgit has rightly prosecuted, convicted and sentenced the appellants in both the appeals and awarded punishments to the petitioners on proven guilty after examining 12 PWs who charged the petitioners for committing the offence while willfully airing the contemptuous material which hurt the religious teachings of the Muslims across the Pakistan generally and peoples of Gilgit-Baltistan particularly. They also contend that the matter falls under the domain of Anti Terrorism Court Gilgit-Baltistan. The petitioners through their controversial programme spread religious hatred feelings among the Muslims who respect the Ahl-e-Bait as the Holy personages and their respect is an integral part of the faith of Muslims. The purpose behind the enactment of the Anti Terrorism Act, 1997 was to punish the terrorists and the law violators who spread religious hatred in the peaceful society of the country, so as the ratio of the

crime in the society may be eliminated and an environment of peace and harmony could be established. They further contend that Section 19 of The Anti Terrorism Act, 1997 was enacted with the purpose to punish the absconders and also the likeminded people who pull the curd from behind. They maintained that the accused are charged under Anti Terrorism Act, 1997, their abettors and associates were also held liable for penal consequences of the act committed with their aid or connivance. They further argued that the accused who were charged under the said Act if not present at the time of commission of offence, but were having nexus with the institution or the group committing crime were also liable to be punished under the said Act. They urged that the important question involved in this case is the maintainability of an appeal by an accused convicted in absentia after due declaration of being proclaimed offender as provided in Section 19 (10) of the Anti Terrorism Act, 1997. According to the learned counsels for the complainant, the appeals of the appellants are not maintainable and the leave to appeal granted by this court was also not sustainable and if such appeals are admitted for regular hearing it would not only be an utter violation of law but will also defeat the pivotal object of enactment of the ATA, 1997. In case of allowing these appeals the most wanted terrorists in high profile cases i.e. Nanga Parbat Case (Killing of 10 foreigners), Chilas Case (the murder of Colonel Mustafa, SSP Diamer and Captain Ishfaq) and 37 hard criminals convicted in absentia by the Anti Terrorism Court

Gilgit would be entitled to file appeals through their counsels in absentia while remaining fugitive will also follow. They also contend that the judgment of this Hon'ble court being the apex court of Gilgit-Baltistan has binding effect on the subordinate judiciary of Gilgit-Baltistan and a judgment of this apex court will set a precedent which is not permissible under the law. They also contend that no relief can be provided to the petitioners unless and until the pre-requisite condition is fulfilled i.e. surrender first, entertainment of appeals/petitions later.

12. They reiterated that the learned Gilgit-Baltistan Chief Court has dismissed the appeals of the petitioners solely on the technical grounds that the appellants have not surrendered before the learned trial court and who were declared absconders after due process of law. The petitioners have lost the right of appeal and audience, hence, these petitions may very graciously be remanded to the learned Gilgit-Baltistan Chief Court to hear and decide the same afresh on its own merits. Furthermore, a Constitutional Petition No. 91/2014 filed by the learned counsels for the appellants is also subjudice in the Hon'ble Supreme Court of Pakistan and till the disposal of the said petition, the Hon'ble Supreme Court of Pakistan has directed not to implement the judgment dated 25.11.2014 in the territories of Pakistan vide its order dated 10.12.2014 passed in Constitutional Petition No. 91/2014. They add force to their submissions that the conviction awarded in absentia could not be challenged by an absconder and

the petitioners have only option to adopt the mechanism as provided in sub Section 12 of Section 19 of the Anti Terrorism Act, 1997. They continue their submissions that the leave to appeal filed by the petitioners was not maintainable as the same can only be entertained when the convicted accused are behind the bars serving the sentences. The conviction can only be suspended and they could be released on bail when they are in prison serving sentences so awarded to them. They further contend that it is the settled proposition of law across the country and worldly recognized interpretation of law that “law does not grant any allowance to those who do not submit to the courts of law” and in this regard pathora of case laws have been rendered by the apex court and High Courts of Pakistan. They concluded their arguments that the petitions filed by the petitioner are not maintainable and if the same are entertained and any relief is granted to the petitioner/convict absconder, it would be ultra vires to the law and a scope would be opened for all those high profile absconders who have been awarded punishment in absentia, hence, the appeals of the petitioners be dismissed to meet the ends of justice. While saying so they relied upon the case laws in case titled Amir & others versus The State reported as PLD 2004 Quetta 16, in case titled Hassan Akhtar & another versus The State reported as 2005 YLR 1283, in case titled Mairaj Begum versus Ejaz Anwar & others reported as PLD 1982 SC 294, in case titled Begum Nusrat Bhutto through Daughter versus The State through Chairman NAB reported as PLD 2002

Lahore 74, in case titled Mumtaz Hussain versus Deputy Inspector General Faisal Abad & 07 others reported as PLD 2002 Lahore 78, in case titled Gul Hassan & another versus The State reported as PLD 1969 SC 89, in case titled Mst. Ramzan Bibi versus District Magistrate & Tribunal Sahiwal & another reported as PLD 1969 SC 97, in case titled Muhammad Aslam & others versus Ejaz Ahmed & others reported as 1982 SCMR 622, in case titled Hayat Bakhsh & others versus The State reported as 1982 SCMR 623, in case titled Mst. Razia Begum versus Jahangir & others reported as PLD 1982 SC 294 in case titled Chan Shah versus The Crown reported as PLD 1956 FC 43, and in case titled Benazir Bhutto MNA, leader of the opposition versus The State reported as SCMR 1999 SC 1619.

13. The learned counsels for the complainant, however, have neither denied nor contradicted that the same Qawali is sung in the wedding ceremonies in Gilgit-Baltistan as “Munkabat”.

14. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 23.11.2015 passed by the learned Gilgit-Baltistan Chief Court as well as the Judgments passed by the PEMRA Authorities, Islamabad, learned Judicial Magistrate at Chamman (Baluchistan) and by the District and Session Judge at Quetta, (Baluchistan). We have also gone through the case laws relied by the learned counsels for the respective parties as well as we are fortified by the number of Judgments delivered by the Hon'ble High Courts & Hon'ble Supreme Court of

Pakistan. The case laws relied upon hardly supports the contentions raised by the complainants. This Court for convenience reproduces the following Articles of the Constitution of the Islamic Republic of Pakistan, 1973:-

Article 1(2) (d). The Republic and its territories.

“Such States and territories as are or may be included in Pakistan, whether by accession or otherwise”.

Article 9. Security of person.

No person shall be deprived of life or liberty save in accordance with law.

Article 13. Protection against double punishment and self-incrimination.

No person:-

- (a) ***Shall be prosecuted or punished for the same offence more than once, or***
- (b) ***Shall, when accused of an offence, be compelled to be a witness against himself.***

Article 14. Inviolability of dignity of man, etc.-

- (1) ***The dignity of man and, subject to law, the privacy of home, shall be inviolable.***
- (2) ***No person shall be subjected to torture for the purpose of extracting evidence.***

Article 258. Government of territories outside Province.

Subject to the constitution, until [Majlis-e-Shoora (Parliament)] by law otherwise provides, the President may, by Order, make provision for peace and good government of any part of Pakistan not forming part of a Province.

Article 260. “Citizen” means a citizen of Pakistan a defined by law;

15. The relevant Articles of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 are reproduced as under:-

Article 1 (2). Short title, extent and commencement.-

- (1) This Order may be called the Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009.
- (2) It extends to the whole of areas Gilgit-Baltistan.

Article 60 of Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009.

- (1) There shall be constituted a Gilgit-Baltistan Supreme Appellate Court, referred to as the Supreme Appellate Court to be the highest Court of Appeal.
- (10) The remuneration and other terms and conditions of service of the Chief Judge and of a Judge of the Gilgit-Baltistan Supreme Appellate Court shall be such as are admissible to the Chief Justice of Pakistan and Judges of Supreme Court of Pakistan.
- (11) Subject to the succeeding provision of this Article, as Supreme Court Gilgit-Baltistan shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of the Chief Court of Gilgit-Baltistan.

Article 76 (3) No Court shall have any jurisdiction which is not conferred on it by this Order or by or under any other law.

Article 95 Order to override other laws, etc.- (1) The provision of this Order shall have effect notwithstanding anything contained in the provisions of any law for the time being in force except that in case of conflict between the laws of Pakistan and the laws framed under this Order, the laws of Pakistan shall prevail.

16. We have also perused the materials available on record of the case file with the able assistance of the learned counsels for the respective parties. As regard the case relied upon by the learned counsels for the petitioners i.e. in case of Muhammad Arif versus the State (supra) wherein, the Apex Court of Pakistan was pleased to hold that the trial of the accused was conducted in absence and without providing an opportunity of hearing to the accused. The said punishments/sentences are not sustainable under the law being violative of the Articles 9 & 10 of the Constitution of Pakistan as well as to the provisions of Sections 10 (11)(b) of the Anti-Terrorism Act, 1997 which necessitated re-trial of the case, in case Mir Ikhlaq Ahmed & another versus the State (supra) the same view was taken that trial in absentia is violative to the Articles of the Constitution Islamic Republic of Pakistan and law, however, the appeal was entertained by the learned High Court and by the learned Apex Court of Pakistan in absentia without surrendering the accused and set aside the convictions/sentences and the case was remanded back to the learned Trial Court for hearing afresh in accordance with law. In a case Muhammad Fazil versus the State & others (supra) the Hon'ble Apex Court of Pakistan has held that a person convicted in absentia had equal rights in filing of appeal and seeking adjudication on merits like any other appellant. In such case the appellant had option of either surrendering before the Trial Court and seeking fresh Trial or filing an appeal in the learned High

Court, if he feels that the evidence recorded against him in absentia does not justify conviction.

17. The case laws cited by the learned counsels for the complainant and learned Advocate General for Gilgit-Baltistan Government i.e. Amir & others versus The State (supra), where an accused is fugitive from law and has not surrendered to the process of law, his appeal was not entertained and the same was dismissed by refusing right of audience to the absconder. The appeal of an accused who has absconded after duly lodging his appeal can be heard on merits and decided accordingly, The appeals filed on behalf of the convicts/absconders, who had not surrendered to the process of law after their conviction, therefore, were not competent, nor the same could be filed by the counsel in whose favour statedly power of attorneys were executed or by their relatives, as such the same being not maintainable under the law were dismissed accordingly, in case of Hassan Akhtar & another versus The State (supra), it is held that the absconders who have not surrendered before the court after their conviction cannot file appeal through their advocate. In case Mairaj Begum versus Ejaz Anwar and others (supra), it is held that respondents despite issuance of non-bailable warrant of arrest remaining fugitive from law and court for nearly five years and not surrendering and counsel appearing in Court from respondents side to state that he having been instructed to remain present in Court---Non surrendering of the accused/convict was intentional and defiance of

court process. Consequently, he lost his right of hearing through his counsel in appeal. In case of Begum Nusrat Bhutto through daughter Miss Sanam Bhutto versus the State through Chairman National Accountability Bureau, The Division Bench of Lahore High Court has held that the proclaimed offender, failure to surrender before Court and trial was conducted in absentia and accused convicted his appeal was filed on behalf of convict, without his appearance in person before the appellate court. The convicted was bound under the law, to surrender before the Court to undergo the sentence of imprisonment passed against him/her. The convict, who was a fugitive from law, was not entitled to invoke the provisions of section 32 of National Accountability Bureau Ordinance 1999. Upon challenging his conviction the appeal was not maintainable in circumstances. In case of Hayat Bakhsh and others versus the State (Supra), it is held that the appeal of the accused, a fugitive from justice is dismissed even though of his co-accused was acquitted.

18. We, however, are fortified by the following judgments to reach on conclusion i.e. Mahram Ali versus Federation of Pakistan PLD 1998 SC 1445, Muhammad Ashfaque Alias Chief & 18 others versus The State, 1998 PCr. LJ 1486 and M.B Abbasi versus The State 2009 SCMR, 808, in case of Fateh Ali versus Pir Muhammad 1975 SCMR 221, in case of Muhammad Darvaish Al-Gilani and 14 others versus Muhammad Shareef and others, 1997 SCMR 524, in case of Meherwan Cavashi Irani Versus Khuda Bukhsh Marri 1998

SCMR page 537. In a case titled Mahram Ali & others versus Federation of Pakistan & others (supra), it is held that the right of access of justice is a well recognized and inviolable right enshrined in Article 9 of the Constitution of 1973 of Pakistan which lays down that no person shall be deprived of life or liberty save in accordance with law. Adverting to the question of trial of an accused in absentia under Section 19 (10) of the ATA , it has been observed that the learned Attorney General had conceded before the Court that no trial in absentia could be held and appropriate measures shall be taken within a period of two months to amend or repeal the aforesaid sections of ATA, in case of Muhammad Ashfaque Alias Chief & 18 others versus the State (supra), the High Court of Sindh was pleased to hold that the appeal is a fundamental right and a continuation of proceedings. When a person could be tried in absentia, there was no reason as to why his appeal could not be heard in absentia. The merits of the case were to be decided on the basis of evidence available on record. Higher degree of assurance was required and it was the basic requirement of law that there must be clear and unequivocal proof that offence was committed by the known persons. Decisions could not be based upon mere supposition, but must rest upon legal grounds established by legal testimony. The rules of evidence could not be departed on the basis of moral conviction. The rule of oral evidence required that best available evidence must alone be given and while dealing with oral evidence, probabilities, presumptions and surrounding

circumstances should always be looked into for more often than not, such evidence was mixture of truth, falsehood, ignorance and motive etc. it is also held that in fact in the Act two rights have been provided to the accused. Firstly, he can appear before the special court and explain his absence, and if satisfactory explanation is offered, the Court would set aside the conviction and would proceed afresh. Secondly, right is under Section 7 of the Act. He can prefer appeal before the High Court. It is pertinent to point out that in Section 7 of the Act, the words used are “shall have a right of appeal”. It means that an accused can, after conviction, prefer appeal to the High Court, despite the fact that he remained absent before the trial Court. The only difference would be that if he appeared before the trial Court he would right for fresh trial and could take all the pleas in defence available to him. While in case of appeal only the material available on record would be examined. Nothing is provided in Section 7 of the Act that, before preferring appeal, the accused was required to surrender before the appellate Court. This court followed the parameter laid down in a case of Indian Jurisdiction i.e. the State of Madhya Pradesh versus Mohandas 1992 Criminal Law Journal 101, 104 and 105 wherein it is held that two rights have been provided to the accused on he can surrender before the learned Court or he may file an appeal before the learned High Court of the respective jurisdiction. In case of M.B Abbassi and another versus the State. The Hon'ble Supreme Court has held that a person convicted in absentia has option either to

surrender before the trial Court and seek fresh trial or file an appeal in the Appellate Court, if he feels that evidence recorded against him would not justify conviction and such person has equal rights of filing appeal, who seeks it adjudication on merits. Upon hearing the appeal was allowed in absentia and convictions and sentences awarded to him were set aside and were acquitted. In case Fateh Ali versus Pir Muhammad and others the Honorable Supreme Court has held that the learned Judge of High Court was under no obligation to make an order of remand. The appellate Court was fully competent to decide the case on the material before him. In case of Muhammad Darvaish Al-Gilani and 14 others versus Muhammad Arif (Supra), The Hon'ble Supreme Court has held that the principle for remand of the case for the lower courts for deciding on merits or re-trial are well settled. This power could not be exercised lightly but sufficient care should be taken in remand of the case. The Court should examine the evidence and if its come to the conclusion that it is not sufficient to pronounce the judgment or decide the issues between the parties it can remand the case or made itself record the evidence and decide it. But if on record there is adequate and sufficient material available on which decision can be made and on the face of it and/or to remand the case would not be justify. In a case of Meherwan Cavasji Irani versus Khuda Bukhsh Marri , the apex court was pleased to hold that there was no justification for remanding the case by the High Court to the trial court for fresh decision . The materials on record were

sufficient before the High Court for deciding the case in circumstances.

19. As regards the question of double jeopardy, we are also fortified with the Judgments reported as Adam versus Collector Customs Karachi PLD 1969 SC 446, The State Versus Hadi Bukhsh (1981 SCMR 1008) , Muhammad Ayub versus Chairman Electricity Board Rawalpindi PLD 1987 SC 195, Muhammad Ashraf and other versus the State 1995 SCMR 626 , Mark Mifsud, Mrs. Rosemarie Morley and another versus Investigating Officer , Customs Karachi and 02 others , PLD 1999 Karachi 336, Nazir Ahmed Versus Capital City Police Officer Lahore 2011 SCMR 484. In case of Adam versus Collector Customs Karachi (*supra*), it was observed by the Supreme Court that the doctrine of “double Jeopardy” which is a term of American Law corresponding to the principle of *autre fois acquit* and *autre fois convict* of the English law, as embodied in Section 403 of the Criminal Procedure Code, prohibits a duplicate trial and a duplicate punishment for the same offence. In a case of Muhammad Ayub versus Chairman Electricity Board (*supra*), the subject matter before the Hon’ble Supreme Court under discussion was article 13 of the Constitution; it was held that this Article provides protection against double punishment in respect of the same offence. In a case of Nazir Ahmed versus City Capital Police Officer (*supra*), it was held that it is well settled principle of law that no person shall be tried and punished twice for the same offence on the same set of allegations, same facts and same set of evidences. It is also held by the

Hon'ble Supreme Court of Pakistan that Article 13 of the constitution sanctifies the well-settled principle of law that no person will be tried for an offence on the same set of facts on which he has already been convicted or acquitted.

20. As regards the contentions raised by the learned counsel for the petitioners that the alleged offence if any committed by the petitioners falls under the Media Laws i.e. the Pakistan Electronic Media Regulatory Authority (PEMRA) read with the PEMRA Rules 2009 and PEMRA (Council of Complaints Rules 2010) being the special law regarding any omission /commission of offence relating to the broadcasting and telecasting on the media channels have been regulated and framed thereto. Consequently, the Geo Group was punished and awarded sentence in shape of fines by the PEMRA vide Judgment dated 26.06.2014. The FIRs were also registered against Geo group, its owners, Anchors and Hosts/Hostess of the programme which was violative to the PEMRA Ordinance 2002 and the rules framed thereto. The Code of Conduct clearly prohibits the licence for airing such materials that may injured the feelings of any person or class as per show cause notices were issued to the Geo News and penalty was imposed thereto for violating the terms & condition of PEMRA Laws & rules being a special law which was sustainable being within the jurisdiction and cognizance of PEMRA authorities and the reference is made under Sections 20, 26, 30, 33, 34, 35 and 37 which are reproduced for convenience as under:-

Section 20. Terms & Conditions of Licence .

A [person] who is issued a licence under this Ordinance shall---

- (a) [Ensure preservation of] the sovereignty, security and integrity of the Islamic republic of Pakistan.

- (b) [Ensure preservation of] the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan.
- (c) Ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards or decency.
- (d) Comply with rules made under this Ordinance;
- (e) Broadcast [if permissible under the terms of its licence] programmes in the public interest specified by the Federal Government or the authority in the manner indicated by the Government or as the case may be, the Authority, provided that the duration of such mandatory programmes do not exceed ten per cent of the total duration of broadcast or operation by a station in twenty-four hours except if, by its own volition, a station chooses to broadcast [xx] such content for a longer duration;
- (f) Comply with the codes of programmes and advertisements approved by the authority and appoint an in-house monitoring committee, under intimation to the Authority, to ensure compliance of the Code;
- (g) Not broadcast or distribute any programme or advertisement in violation of copyright or other property right;
- (h) Obtain NOC from Authority before import of any transmitting apparatus for broadcasting, distribution or teleporting operation.
- (i) Not sell, transfer or assign any of the rights conferred by the licence without prior written permission of the Authority.

Section 26 Council of complaints.

[(1) The Federal Government shall, by notification in the official Gazette, establish Councils of Complaints at Islamabad, the provincial capitals, and also at such other places as the Federal Government may determine.]

(2)[Each] Council shall receive or review complaints made by persons or organizations from the general public against any aspects of programmes broadcast [or distributed by a station] established through a licence issued by the Authority and render opinions on such complaints.

(3)[Each] Council shall consist of a [Chairperson] and five members being citizen of eminence from the general public at least two of whom shall be women.

(3) A) the councils shall have the powers to summon the licence e against whom a complain has been made and called for his explanation regarding any matter relating to its operation.

(4). the authority shall formulate rules for the functions and operation of the [councils] within two hundred days of the establishment of the authority.

(5). The councils may recommend to the authority appropriate action of censure, fine against to broadcast or CTV station or licence e for violation of the codes of programme content and advertisement as approved by the authority as may be prescribed.

Section 30 Power to vary conditions, suspend or revoke the licence .

(1)The authority may revoke or suspend the licence of a broadcast media or distribution service by an order in writing on one or more of the following grounds, namely:-

(a) The licence e has fail to pay the licence free, annual renewal fee or any other charges including fine, if any;

(b) The licence e has contravened any provision of this Ordinance or Rules or Regulations made thereunder:

Provided that in the case of revocation of a licence of a broadcast an opinion to this effect shall also be obtained from the council of complaints;

(c) The licence e has failed to comply with any condition of the licence ; and

(d) Where the licence e is a company , and its shareholders have transfer a majority of the shares in the issue or paid up capital of the company or if control of the company is otherwise transferred to persons not being the original shareholders of the company at the time of grant of licence , without written permission of the authority.

(2). the authority may vary any of the terms and conditions of the licence where it deems that such variation is in the public interest.

(3). Accept for reason of necessity in the public interest a licence shall not be varied, suspended or revoked under Sub Section 1 or Sub Section 2 unless the licence has been given reasonable notice to show cause and personal hearing.

Section 33 offence and penalties.

(1). any [broadcast media or distribution service] operator or person who violates or abets the violation or any of the provisions of the Ordinance shall be guilty of an offence punishable with a fine which may extend to [ten million] rupees.

(2). Where such [broadcast media or distribution service] operator or person repeats the violation or abetment, such shall be guilty of an offence punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3). Where the violation, or abetment of the violation of any provisions of this Ordinance is made by a person who does hold a licence , such violation shall be punishable with imprisonment for a term which may extend to four years, or with fine, or with both.

(4). Whosever damage, removes tampers with or commits theft of any equipment of a broadcast media or distribution service station licence d by the authority, including transmitting or broadcasting apparatus, receivers, boosters, converters, distributions, antennae, wires, decoders, set-top boxes or multiplexers shall be guilty of an offence punishable with imprisonment which may extend to three years, or with fine, or both.

Section 34 cases to be initiated on complaint.

No court shall take cognizance of any offence under [Sub-Section (1) of Section 33 of] this Ordinance except a complaint in writing by the Authority or any officer authorized by it.

Section 35 cognizance of offences etc.

(1) No court shall inferior to that of a Magistrate of the first class shall an offence punishable under this Ordinance.

(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure 1898 (Act of 1898),, it shall be lawful for any Magistrate the first class to pass any sentence authorized by this Ordinance even if such sentence exceeds his power under the said section 32.

Section 37. Ordinance overrides other laws:-1. The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force, or any contract, agreement or any other instrument whatsoever.

Provided that—

- (a)** The national broadcaster, namely the Pakistan Broadcasting Corporation shall continue to be regulated by the Pakistan Broadcasting Corporation Act 1973 (XXXII) of 1973 and the Pakistan Television Corporation and Shalimar Recording and Broadcasting Company limited shall continue to be administered under the provisions of the companies Ordinance 1984 (XLVII of 1984) ; and
- (b)** Other existing private broadcaster or CTV operators who had been granted respective monopolies in multi model Distribution System , Cable TV and in FM Radio shall henceforth be regulated by this Ordinance except in respect where specific exemption are granted by the authority.

21. It is an admitted principle of law that nobody can be prosecuted and punished twice for the same offence in violation of the fundamental rights of the petitioners. The petitioners were prosecuted almost in all the four provinces of Pakistan and most of the cases registered on the same set of allegations, same set of fact and the same set of evidence and many of the FIRs have been quashed and in two case the petitioners were acquitted whereas PEMRA has convicted and awarded sentences to Geo Channel prior to the Judgment of Anti-Terrorism Court Gilgit-Baltistan which are holding field.

22. In view of the above discussions, case laws referred herein above, materials available on record and Judgments passed by the

learned PEMRA authorities, vide order dated 20.06.2014 for violation of Media Laws, Order dated 24.06.2014 in Criminal case / FIR No. 21/2014 registered at Police Station Chamman passed by the learned Judicial Magistrate at Chamman (Baluchistan) much prior to the Impugned Common Judgment dated 25.11.2014 in TC case No. 32/2014 passed by the learned Anti-Terrorism Court No. I Gilgit-Baltistan on the same set of allegations, same set of facts and same set of evidence which hold field as no appeal against the said Judgments/orders have been preferred. Subsequently, the learned District & Sessions Judge at Quetta Baluchistan acquitted the petitioner vide Order dated 21.05.2016 in Session case No. 36/2015 (FIR No. 117/2014) which also holds field. In our considered view the provisions of Article 13(a) of the Constitution of Islamic Republic of Pakistan 1973 read with Article 95 of The Gilgit-Baltistan (Empowerment and self Governance) Order 2009 and the provisions of Section 403 Cr. PC as well as Section 26 of the General Clauses Act 1897 are fully attracted. We also hold that after promulgation of the Pakistan Electronic Media Regulatory Authority Ordinance 2002, being a Special Law, have exclusive jurisdiction and take cognizance of offences committed by Media Channels in violation of PEMRA Laws & Rules thereto i.e. in presence of penal provisions, PEMRA can suspend, cancel licence. Prosecute convict and award sentences of fines whosoever violates the PEMRA Laws & Rules thereto. The PEMRA Ordinance 2002 has an overriding effect upon other previous enacted special laws. It is settled principle of law that every case is to be decided on its own merits. The high profile

cases referred by the learned counsel for the complainant are completely distinguishable. In pursuance of the case laws referred above of the learned High Courts and Hon'ble Supreme Court of Pakistan from which we are fortified and in our own view the case of appellants are made out for acquittal. Both the Criminal Appeals are allowed. Resultantly appellants in both the appeals i.e. Mir Shakeel-ur-Rehman in Criminal Appeal No. 01/2016 and Mst. Shaista Lodhi, Veena Malik and Asad Bashir Khattak in Criminal Appeal No. 15/2016 are acquitted. Consequent thereto the Impugned Judgment dated 23.11.2015 in Criminal Appeals No. 45/2014 and 48/2014 passed by the learned Gilgit-Baltistan Chief Court and Judgment dated 25.11.2014 in TC case No. 32/2014 passed by the learned Anti-Terrorism Court No. I, Gilgit-Baltistan are set aside.

23. Both the appeals are allowed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?