

## JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

W.P No. 881-A of 2012

## JUDGMENT

Date of hearing 16-04-2015Appellant(s)/Petitioner (s) Faridoon and Gulab Riaz by Sayyad Ahmad Abbasi AdvocateRespondent (s) The State and others**QALANDAR ALI KHAN, J:-**

Faridoon and

Gulab Riaz, petitioners, have filed this writ

petition under Article 199 of the Constitution of

Islamic Republic of Pakistan, 1973, for

declaration to the effect that order dated

20.11.2012 of the Ex-officio Justice of

Peace/ASJ-III, Abbottabad, (respondent No.3)

is against law, facts and evidence on record,

without jurisdiction and without lawful

authority, whereby section 302 PPC has been

added by respondent No.3 in case FIR No.1045

dated 04.11.2012 under Sections 319/34 PPC

Police Station Cantt: Abbottabad.

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Examiner  
Peshawar High Court  
Abbottabad Bench  
Authorized Under Sec 75 A of Ordinance

3. The main grievance of the petitioners is that the case against them was registered under Sections 319/34 PPC vide FIR No.1045 dated 04.11.2012 in Police Station Cantt: Abbottabad, and they had also secured Ad-interim pre-arrest bail from the Court, but on the application of complainant/respondent No.2, Muhammad Parvez, the Ex-Officio Justice of Peace directed the SHO Police Station Cantt: to include Section 302 PPC in the FIR, which was beyond the scope of Section 22-A Cr.PC, thus falling outside the jurisdiction of Ex-Officio Justice of Peace.

4. The record would show that complainant/respondent, reported to the police that his daughter, Mst Shangi, married to Gul Riaz, petitioner No.2, about two years ago, was driven out from his house by the latter after subjecting her to beating and snatching away four months old son, Faizan, from her and that the petitioners had also forcibly taken her to Sheikh Dhari from hospital where she was admitted for treatment a few days back and when he went to Sheikh Dhari to enquire about

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her health, he found her lying in semi conscious condition with her left hand burnt, probably, due to physical violence by her husband Gul Riaz (petitioner No.2), and father in law, Faridoon (petitioner No.1). Mst Shangi died in the hospital on 22.10.2012, leading to registration of the case under Section 319/234 PPC vide FIR No.1045 dated 04.11.2012, in Police Station Cantt: Abbottabad.

5. At the very outset, the learned Additional Advocate General submitted copies of two charge sheets framed in the case, one by learned Additional Sessions Judge-III, Abbottabad, on 06.04.2013, under Section 319 PPC against accused Arshad, apparently named subsequently in the case; and the other by learned Additional Sessions Judge-VII, Abbottabad, on 04.06.2013, under Section 302/34 PPC against the petitioners.

6. There can be no cavil about this proposition that once charge is framed by the trial Court, keeping in view facts of the case and relevant provisions relating to framing of charge under Chapter No.XIX of the Criminal

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Resident Magistrate  
Abbottabad Bench  
District Court Abbottabad

Procedure Code 1898, the sections of law applied in the case by the police /prosecution at the time of registration of FIR, during investigation and at the time of submission of challan, become irrelevant and of no significance, as the trial Court enjoys discretion, of course, within the parameters of law, to frame charge in the light of facts and evidence available on record, regardless of the sections of law applied in the FIR or complete challan by the police/prosecution. In other words, the question of application of sections of law is rendered only academic after completion of investigation and submission of challan to the Court.

7. Moreover, even the sections of law under which an accused is charged by the trial Court are subject to alteration/variation "at any time" before judgment is pronounced, under Section 227 Cr.PC. In any case, there would be no justification to invoke the constitutional jurisdiction of this Court when other adequate remedies are available at different stages in ongoing proceedings, not yet culminated to the

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Abbottabad Bench  
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detriment of a person, bringing him within the definition of 'an aggrieved' person and thus accruing a cause of action in his favour under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

8. While reiterating strict adherence to the provisions of section 22-A Cr.PC in its letter and spirit by the learned Justices of Peace, the writ petition is dismissed, being not maintainable for the forgoing reasons.

**Announced:**  
**16.04.2015**

  
JUDGE

  
JUDGE

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Examiner  
Peshawar Civil Court  
Abbottabad Bench  
Authorized Under Section 25 of the Court Rules