

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.MQ.No.42-D/2018 with
Cr.Misc.No.43-D/2018

PESCO through Chief Executive Officer, PESCO House Shami
Road, Peshawar

Versus.

The State and 43 others

JUDGMENT

For petitioner: Mr. Jehanzeb Ahmad Chughtai Advocate.

For State: Mr. Adnan Ali, Asstt: A.G.

For respondents: M/S Ghulam Muhammad Sappal, Jamal
Abdul Nasir Awan and Ms. Kaniz Batool
Advocates.

Date of hearing: 24.6.2019.

S.M. ATTIQUE SHAH, J.- Through this single judgment this Court intends to decide the following Criminal Miscellaneous Quashment Petitions, involving a common question of law and facts and having been filed against consolidated judgment dated 05.11.2018 rendered by learned Sessions Judge, D.I.Khan. The particulars of these petitions are as under:-

1. **Cr.MQ.No.42-D/2018.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and 43 others).
 2. **Cr.MQ.No.05-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another). ✓
 3. **Cr.MQ.No.06-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
 4. **Cr.MQ.No.07-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House, Peshawar Vs. The State and another).
- 1/11/19

5. **Cr.MQ.No.08-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House, Peshawar Vs. The State and another).
6. **Cr.MQ.No.09-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
7. **Cr.MQ.No.10-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
8. **Cr.MQ.No.11-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
9. **Cr.MQ.No.12-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
10. **Cr.MQ.No.13-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
11. **Cr.MQ.No.14-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
12. **Cr.MQ.No.15-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
13. **Cr.MQ.No.16-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
14. **Cr.MQ.No.17-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
15. **Cr.MQ.No.18-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
16. **Cr.MQ.No.19-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
17. **Cr.MQ.No.20-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
18. **Cr.MQ.No.21-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
19. **Cr.MQ.No.22-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
20. **Cr.MQ.No.23-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).

12/01/19

21. **Cr.MQ.No.24-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
22. **Cr.MQ.No.25-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
23. **Cr.MQ.No.26-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
24. **Cr.MQ.No.27-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
25. **Cr.MQ.No.28-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
26. **Cr.MQ.No.29-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
27. **Cr.MQ.No.30-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
28. **Cr.MQ.No.31-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
29. **Cr.MQ.No.32-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
30. **Cr.MQ.No.33-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
31. **Cr.MQ.No.34-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
32. **Cr.MQ.No.35-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
33. **Cr.MQ.No.36-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
34. **Cr.MQ.No.37-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
35. **Cr.MQ.No.38-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
36. **Cr.MQ.No.39-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).

1/11/2019

37. **Cr.MQ.No.40-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
38. **Cr.MQ.No.41-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
39. **Cr.MQ.No.42-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
40. **Cr.MQ.No.43-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
41. **Cr.MQ.No.44-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
42. **Cr.MQ.No.45-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).
43. **Cr.MQ.No.46-D/2019.**
(PESCO, through Chief Executive Officer, PESCO House Shami Road, Peshawar Vs. The State and another).

2. Common facts of these cases are that during checking, the WAPDA authorities found the private respondents using electricity through direct connections without passing through the electric meters and thus on the report of WAPDA authorities, separate FIRs under Section 462-I PPC were registered against the respondents on different dates. After completion of investigation, complete challan against the respondents were submitted and their cases were pending trial. The learned Sessions Judge, D.I.Khan clubbed all these cases and vide consolidated judgment dated 05.11.2018 held that *"it would be a futile exercise to continue with the trial of the matters when there is every likelihood of declaration of the same as coram-non-judice. The question of maintainability is, therefore, disposed of accordingly. Further proceedings in the matters are stopped and the challans so sent up are dismissed as returned. The complainant side is,*

1/11/18

however, left at liberty to bring complaints in all the individual accused." Hence, these petitions.

3. Learned counsel for the petitioner at the very outset argued that the impugned judgments are illegal and violative of the judgment dated 16.10.2017 of this Court passed in Cr.A.No.109-D/2016 vide which the cases were remanded to the learned trial Court for its decision on the question of jurisdiction. He further argued that the offence under Section 462-O PPC is a cognizable offence and S.H.O concerned police stations were competent to register the *ibid* F.I.Rs. Further argued that when there is conflict between a Statue and the Schedule, then preference is to be given to the Schedule. Lastly, he prayed for acceptance of these petitions and setting aside the impugned judgments/orders.

4. Learned counsel appearing on behalf of the respondents, while controverting the arguments of the learned counsel for petitioners argued that the controversy regarding the preference of the Schedule over the Statue has already been settled and placed reliance on **2001 YLR 197 (Karachi)**. Further, argued that Chapter XVII-B, relating to the matters of electricity, has already been included in the Pakistan Penal Code vide Criminal Law (Amendment) Act, 2016 (Act No.VI/2016), wherein an inbuilt provision has been provided by Section 462-O PPC for dealing with the matters covered by the *ibid* chapter, further argued that the *ibid* provisions of Section 462-O PPC have specifically excluded the provisions of Cr.P.C. 1898, as well as any other law for the time being in force in the matters covered by Chapter XVII-B.

1/10/2017

5. Arguments heard and record perused.

6. In these quashment petitions, the precise question for determination before this Court is **“whether the provisions of Section 462-O PPC are applicable to the cases covered by Chapter XVII-B of the Pakistan Penal Code 1860, or the Schedule appended to the Code of Criminal Procedure 1898, is to be followed in respect of the ibid offences.”** For ease of reference provisions of Section 462-O PPC are reproduced below:-

“462-O. Cognizance. (1) The Court shall try an offence punishable under this Chapter.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the Court shall not take cognizance of any offence under this Chapter except on a complaint made, with reasons to be recorded in writing along with full particulars of the offence committed under this Chapter, by duly authorized officer (not below Grade 17) of the Government or the distribution company, as the case may be.”

7. The ibid provision of Section 462-O PPC starts with non obstante clause i.e. **“Notwithstanding”** which means “despite” or “in spite of”. The very intention of the Legislature by using the phrase **“Notwithstanding”** in the heading of ibid Section is to exclude all other provisions available in the Code of Criminal Procedure, 1898 as well as provisions available in any other law for the time being in force in the matters covered by *Chapter XVII-B of Pakistan Penal Code, 1860*, the application of non-obstante clause was elucidated by the Hon'ble Supreme Court of Pakistan in case titled ***"Muhammad Mohsin Ghaman and others Vs. Government of Punjab***

through Home Secretary Lahore and others" 2013 SCMR

85, wherein it was held that:-

"One of the foundational principles governing the interpretation of non-obstante clause is that it has to be read in the context of what the legislature intended in the enacting part of the provision. In 'Interpretation of Statutes' by NS Bindra, the author with reference to specific precedent case law precisely addresses this issue and comments as follows:--

"It has to be read in the context of what the legislature conveys in the enacting part of the provision. It should first be ascertained what the enacting part of the section provides on a fair construction of words used according to their natural and ordinary meaning and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing law which is inconsistent with the new enactment. The enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously, for even apart from such clause a later law abrogates earlier laws clearly inconsistent with it.

The proper way to construe a non-obstante clause is first to ascertain the meaning of the enacting part on a fair construction of its words. The meaning of the enacting part which is so ascertained is then to be taken as overriding anything inconsistent to that meaning in the provisions mentioned in the non-obstante clause. A non-obstante clause is usually used in a provision to indicate that that provision should prevail despite anything to the contrary in the provision mentioned in such non obstante clause. In case there is any inconsistency between the non obstante clause and another provision one of the objects of such a clause is to indicate that it is the non obstante clause which would prevail over the other clauses. It does not, however, necessarily mean that there must be repugnancy between the two

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provisions in all such cases. The principle underlying non obstante clause may be invoked only in the case of 'irreconcilable conflict'.

8. Thus, the very object and purpose of incorporating non obstante clause in a provision is that the said provision should prevail despite anything to the contrary provided in any other provision of the same stature or any other law on the same subject, and in the case of inconsistency and irreconcilable conflict between the two clauses, the non obstante clause would get preference over the other clause.

9. Hence, in view of the above, the offences relating to Chapter XVII-B of the PPC shall only be covered by the provisions of Section 462-O, which ousts the applicability of the Code of Criminal Procedure, 1898 or any other law for the time being in force relating the assumption of jurisdiction of the court in the matter. Thus the Court shall not take cognizance of any offence under this Chapter, except on a complaint made, with reasons to be recorded in writing along with full particulars of the offence committed under this Chapter, by duly authorized officer (not below Grade 17) of the Government or the distribution company, as the case may be. This certainly means that the Court shall not take cognizance of any of the offences relating to Chapter XVII-B of the PPC, but except upon a complaint provided by the provisions of Section 462-O.

10. The term "**Court**" for the said purpose has been defined in clause (a) of Section 462-G PPC to mean the Court of Session designated as Electricity Utilities Court empowered to take cognizance of an offence under the said Chapter.

11. Moving on further to the assertions of the learned counsel for the Petitioners that the Schedule would prevail over the parent statute, suffice it to mention that it is by now a settled principle of law that when there is conflict in an enabling provision of an Act or an Ordinance and the Schedule thereto, then, the provisions of the main Act/Ordinance are to prevail upon the provisions of the Schedule appended therein. In this respect reliance is placed on the case of ***"Federation of Pakistan through Secretary, Ministry of Finance and others Vs. Haji Muhammad Sadiq and others"*** 2007 P T D 67 [Supreme Court of Pakistan], wherein it was held that:-

"There could be cases wherein a conflict between the Act and the schedule could be visible and in such a situation principle noted in the Craies on Statute Law (seventh Edition 1971 at pg. 225) and N.S. Bindra's, The Interpretation of Statutes (Seventh Edition pg. 92) shall be pressed into service. Keeping in view the above principles, this Court in the case of Excise and Taxation Officer v. Burma Shell Storage (ibid) held that in case of irreconcilable inconsistency between the charging section and a schedule, former is to prevail and schedule is to yield to the Act."

12. Moreover, it is settled principle of law that-A ***communi observantia non est recedendum***-----When law requires a thing to be done in a particular manner, then it would be a nullity in the eye of law, if not performed in that very prescribed manner. This established principle of law has been affirmed by the Apex court and in that respect reliance can be placed on; *The Collector of Sales Tax, Gujranwala v. Super Asia Mohammad Din and sons* 2017 SCMR 1427, Hafiz

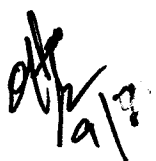
Tassaduq Husain v. Muhammad Din through Legal Heirs 2011 PLD 241 Supreme Court, *Muhammad Akram Vs. Mst. Zainab Bibi* 2007 SCMR 1086, *Khyber Tractors (PVT.) LTD v. Pakistan through Ministry of Finance, Revenue and Economic Affairs, Islamabad* 2005 PLD 842 Supreme Court, *Shujat Hussain v. State* 1995 SCMR 1249, *Hakim Ali v. Muhammad Salim* 1992 SCMR 46, *Muhammad Anwar and others v. Mst. Ilyas Begum and others* PLD 2013 Supreme Court 255, *Atta Muhammad Qureshi v. The Settlement Commissioner, Lahore Division, Lahore and 2 others* PLD 1971 SC 61; *Tehsil Nazim, T.M.A. Okara v. Abbas Ali and 2 others* 2010 PLC 259 and *Ignees Maria and another v. District Coordination Officer, District Bahawalnagar and 2 others* 2012 PLC (C.S.) 772 rel.

13. In view of the above, the impugned judgments and orders dated 05.11.2018 are based on proper interpretation of law and do not need any interference by this Court in the present quashment petitions, therefore, the same are dismissed, being meritless.

Announced.
Dt: 24.6.2019.
Imran/*


JUDGE

(S.B)
Hon'ble Mr. Justice S.M. Attique Shah


19/7